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IN THE COURT OF SENIOR CIVIL JUDGE
AT T. NARASIPURA.

PRESENT

SMT. PARVEEN A BANKAPUR

B.Com., L.L.B., (Spl)

SENIOR CIVIL JUDGE, T. NARASIPURA.

O.S. NO.31/2017.

DATED THIS 09th DAY OF JULY, 2026.

PLAINTIFF

: Sri. Ravinaika,
S/o Gavisiddaiah,
Age: 35 years,
R/at: # 734/2,
Dasanaika Street,
P.L.D. Bank Road,
T. Narasipura.

(By Sri. A.L.S., Advocate)

Vs.

DEFENDANT

: Sri. T.T. Parthasarathi
Adopted son of Venkategowda
@ Gundappa,
Age: 50 years,
R/at: Turaganuru village,
Bannur Hobali,
T. Narasipura taluk.

(By Sri. S.J., Advocate)

Date of institution of suit : 08.09.2017.
Nature of suit : Recovery of Money.
Date of commencement of evidence : 20.08.2024.
Date of Judgment : 09.07.2026.
Total duration : YEARS MONTHS DAYS.
08 09 21

(PARVEEN A BANKAPUR)

Senior Civil Judge,
T. Narasipura.

J U D G M E N T

The plaintiff has filed the suit for the relief of recovery of money.

2. The case of the plaintiff is as under.

The defendant is the owner of the suit property. He approached the plaintiff to sell the suit property. The plaintiff accepted an offer. Accordingly, the defendant executed a registered agreement of sale on 14.10.2016 to sell the suit property for Rs.51,20,000/- to the plaintiff. He has paid advance amount of Rs.17,50,000/- to defendant in the presence of witness.

The defendant agreed to execute the sale deed within 3 months from the date of agreement. After the execution of the agreement, the plaintiff demanded the defendant several times to execute the sale deed. But, he did not do so. Hence, the plaintiff caused a legal notice to him on 08.05.2017. On 11.05.2017 the defendant reply to the said notice to get an undue advantage. The defendant agreed to return the advance sale consideration amount of Rs.17,50,000/- to the plaintiff with 1.5% interest p.m from the date of agreement. But, he has not paid amount to plaintiff. The plaintiff got issued legal notice on 23.05.2017 through R.P.A.D calling him to pay the said amount. The said notice duly served upon him on 25.05.2017. After the said notice the defendant is not come forward to pay the earnest money along with interest to plaintiff nor reply the notice. On the other hand the defendant got issued a legal notice to plaintiff under false set of facts and allegations by suppressing the truth. For which the plaintiff issued reply on 24.06.2017.

Hence, the plaintiff has filed the suit for the relief of recovery of money to get the sale deed executed by the defendant as per the agreement of sale. He has also prayed to execute the sale deed through the process of court if the defendant would fail to do so.

3. The defendant has appeared before the court through his counsel and filed the written statement.

4. In the written statement, the defendant has admitted that he is the owner of the suit property and also agreed to sell the suit property for sum of Rs.51,20,000/- and received part consideration of Rs.17,50,000/- from the plaintiff and agreed to receive the balance amount of Rs.33,70,000/- before registration. But, he has denied other contents of the plaint. He issued the reply notice to the notice of the plaintiff.

The defendant has further contended that the he is the owner in possession of suit schedule properties which are self acquired properties. There is no cause of action to file the suit. The suit is not maintainable. The plaintiff was not having money with him to pay the balance sale consideration and he started to give unnecessary reasons. The plaintiff orally instructed the defendant to obtain 11-E sketch in the name of Shivanna S/o Javarayanayaka, but suppressing the said facts plaintiff got issued reply notice calling upon to produce photostat copies of documents. Accordingly, he has prayed to dismiss the suit with exemplary costs.

5. The following issues and additional issues are framed on the basis of above pleadings.

1. Whether the plaintiff proves that the defendant had agreed to return the advance consideration amount of Rs.17,50,000/- along with interest at the rate of 1.5% per annum from the date of Sale agreement as compensation?
2. Whether the defendant proves that the plaintiff himself has committed breach of contract and as such he is not entitled for refund of earnest money and interest by way of damages?
3. Whether the plaintiff is entitled for relief as sought for?
4. What order or decree?

ADDITIONAL ISSUES

1. Whether the plaintiff proves that defendant having agreed to sell the suit property for Rs.51,20,000 received an amount of Rs.17,50,000/- as pleaded?
2. Whether the plaintiff further proves that he has been ready and willing to perform his part of contract?

6. The plaintiff examined himself as P.W.1 and has got a witness examined as P.W.2 and got 22 documents marked as Exs.P.1 to 22 to prove his case. The defendant examined himself as D.W.1 and has got 6 documents marked as Exs.D.1 to 6 to prove his defence.

7. I have heard the arguments of both sides and perused the materials on record.

8. The answers to the issues are as under:-

Issue No.1 : Partly in Affirmative.

Issue No.2 : Partly in Affirmative.

Issue No.3 : Partly in Affirmative.

Issue No.4 : As per final order.

Additional
Issue No.1 : Affirmative.

Additional
Issue No.2 : Negative.

REASONS

9. ADDITIONAL ISSUES NO.1:- Before adverting to the merits involved in the case let me remember myself with the well settled legal principles that grant of specific performance of contract is discretionary relief. Merely, because it is lawful to grant specific performance the courts need not grant decree for specific performance. The discretionary shall not to be exercised in an arbitrary or

unreasonable manner. The courts are guided by the judicial principles and capable of corrections by the court of appeal.

10. It is well settled legal principles regarding grant of specific performance of contract or colluding in Sec.20 of Specific Relief Act 1963. Section 20 of the Specific Relief of Act preserves judicial discretion to court as to decree in the suit for specific performance. Courts are meticulously consider all those facts and circumstances of the case before granting decree for specific performance. The court is guided by the principles of justice and equity and good conscious in granting specific performance. Keeping in mind it is well settled legal cannons let me proceed to decide this case.

11. According to the plaintiff, the defendant has inked the agreement of sale in his favour to sell the suit property by receiving part consideration amount of Rs.17,50,000/- as earnest money and agreeing to execute the regular sale deed by receiving remaining balance amount of Rs.33,70,000/-. It is further contention of the plaintiff that within 3 months from the agreement of sale he shall execute the registered sale deed in favour of plaintiff. It is further contention of the plaintiff that after lapse of stipulated period the defendant not execute the sale deed and plaintiff is always ready and willing to

perform his part of contract. It is further contention of the plaintiff that he issued legal notice to the defendant to execute the sale deed, then the defendant got issued legal notice on 08.05.2017 to the plaintiff under false set of facts and allegations as if he would have ready to perform his part of contract. It is further contention of the plaintiff that the plaintiff has reply to the notice on 11.05.2017. Thereafter the defendant personally approached the plaintiff and extend inability to execute the registered sale deed in view of acquisition process for acquire the plaintiff schedule property by the competent authority for public purpose and he agreed to return the advance amount of Rs.17,50,000/- with interest at the rate of 1.5 percent per month from the date of agreement within 5 days. It is further contention of the plaintiff that neither the defendant returned the advance amount nor pay the interest amount nor execute the sale deed. It is further contention of the plaintiff that plaintiff got issued legal notice to the defendant on 23.05.2017 then after also the defendant got issued 2nd legal notice to the plaintiff by the respondent, for that he issued reply notice. It is further contention of the plaintiff that during the pendency of the suit upon enquiry in the Revenue Department as well as in P.W.D Department, Irrigation Department and also in Taluk Panchayath T. Naraasipura, it is ascertained by the plaintiff that suit properties is not at all acquired by any

department for public purpose. It is further contention of the plaintiff that defendant is failed to execute the registered sale deed on the basis of registered agreement of sale.

12. Plaintiff examined as P.W.1 and reiterated the plaint contents in his examination in chief. He placed Ex.P.1 registered agreement of sale deed dated 14.10.2016 which is executed by defendant in favour of plaintiff. To support to the Ex.P.1 he produced copy of notices reply notices, postal receipts, postal acknowledgments and documents relating to the Sy.No.26/2 which is suit property in this case as per Ex.Ps.2 to 16.

13 During the course of cross examination he admits that, he has not produced any document to show that he having bank balance from the date of execution of the agreement of sale till today. He further admits that towards north side of the suit lands Kabini river water supply facility is arranged. He further admits that as per Ex.P.1 defendant shall execute the sale deed in favour of him by receiving balance consideration amount. He further admits that in the said 3 months the defendant applied in Survey department for surveying the suit lands. He denied the suggestion that since defendant is a civil contractor and he need of amount, therefore, he insisted the

defendant to pay the balance consideration amount and get execute the sale deed in his favour. The said suggestion is denied by by the P.W.1. PW1 admits in his cross examination about issuance of notice by the defendant and also reply notice from him. In the cross examination he stated that from the Tahasildar office he came to know that for widening the road the government has acquired the suit lands. He denied that he has no balance consideration amount to pay the defendant to get execute the sale deed.

14. In support of his case plaintiff examined one more witness as P.W.2. The P.W.2 deposed that he know the plaintiff and defendant and initially the plaintiff has filed the suit for recovery of suit claim amount and then specific performance of contract. It is further deposed that defendant has agreed to sell the property in favour of plaintiff and executed Ex.P.1 by receiving advance amount of Rs.17,50,000/- and at that time he put his signature on the agreement of sale as per Ex.P.1(c). In the cross examination he admits that plaintiff is his father in law. He admits that as per the term of Ex.P.1 within 3 months sale deed is to be execute. He further admits that the documents are not ready.

15. On perusal of Ex.P.1 is the agreement of sale which is execute on 14.10.2016. The defendant has not denied receipt of Rs.17,50,000/- advance amount from the plaintiff and also not denied execution of Ex.P.1 in favour of plaintiff. In the cross examination of defendant he clearly admits the execution of Ex.P.1. Hence the plaintiff has proved that defendant has executed the agreement of sale in favour of him by receiving the advance amount of Rs.17,50,000/-. Accordingly, **additional issue No.1** is answered in the **affirmative**.

16. ISSUE NO.2 AND ADDITIONAL ISSUE NO.2:-

Since both issues are interlinked each other. Hence, I have taken together for common discussion to avoid the repetition of the facts.

17. Initially, the plaintiff has filed preset suit for recovery of advance sale consideration amount paid by him along with interest. Thereafter, the plaintiff has pleaded alternative relief for specific performance of contract to execute the registered sale deed in his favour by way of amendment of plaint. In that circumstances, additional issue with respect of readiness and willingness of the plaintiff is framed. As per the amended plaint pleadings during the pendency of the suit the plaintiff enquired in the Revenue Department as well as in the Public Works Department, Irrigation Department and also

in the Taluk Panchayath T. Narasipura. It is ascertained by the plaintiff that suit schedule property is not at all acquired by any department for public purpose. In spite of that the defendant with an ulterior motives made believable of innocent plaintiff regarding the said facts under false and misrepresentation and as such the defendant is liable to execute the agreed registered sale deed in favour of the plaintiff.

18. The documents produced by the plaintiff i.e., Ex.P.2 is the copy of notice issued by the defendant to the plaintiff. As per the agreement of sale Ex.P.1 the sale deed will execute within 3 months by obtaining survey sketch and other documents pertaining to the suit schedule property, Atlas copy, Akar bandh etc., Ex.P.1 is executed on 14.10.2016. Ex.P.2 is the notice issued by the defendant is on 08.05.2017. After lapse of 6 months when plaintiff has not responding to the defendant, the defendant has issued Ex.P.2 notice stating that he has executed agreement of sale on 14.10.2016 agreeing to sell the suit schedule property for sale consideration of Rs.51,20,000/- by receiving advance amount of Rs.17,50,000/-. It is further stated in the Ex.P.2 that he obtained survey sketch map and other documents and also stated that calling upon the plaintiff to pay the balance consideration amount of Rs.33,70,000/- and get execute

the registered sale deed in his favour. It is further stated in the said notice that if the plaintiff failed to do so the earnest amount of Rs.17,50,000/- will be forfeited. To response of Ex.P.2 the plaintiff replied to the notice of defendant on 11.05.2017 as per Ex.P.3 by stating that he still ready to perform his part of contract by making payment of entire balance sale consideration. Thereafter, the plaintiff again issued legal notice to the defendant on 25.03.2017, by stating that upon reply notice as per Ex.P.3 by him. The Defendant personally approached the plaintiff and explained inability to execute the registered sale deed in view of the acquisition process for to acquire the notice schedule property by the competent authority for public purpose and he agreed to return the advance sale consideration amount of Rs.17,50,000/- along with interest at the rate of 1.5% per month from the date of agreement within 5 days. It is further stated in the notice as per Ex.P.6 the plaintiff calling upon the defendant to return the advance amount of Rs.17,50,000/- with interest at the rate of 1.5% per month from the date of agreement. Immediately after receipt of this legal notice, thereafter, the plaintiff has filed the present suit for the relief of recovery of advance amount. In that notice and reply notice the defendant no where stated about inability to execute the registered sale deed in favour of plaintiff. On the other hand as per Ex.P.2 the defendant himself call the

plaintiff to get execute the registered sale deed in his favour by paying the balance consideration amount to him. That notice shows that the plaintiff is not ready to perform his part of contract and not get ready with him balance consideration amount. The plaintiff has stated that in view of acquisition proceeding with respect to suit schedule property, the defendant showing his inability to execute the registered sale deed in his favour. It is pertinent to note that none of the party not produce the acquisition process or notice issued by the competent authority to whom acquiring the lands. Therefore, to hide the inability of payment of remaining balance amount the plaintiff has taking such contention.

19. The defendant examined himself as D.W.1 he deposed that he agreed to obtain survey sketch, R.T.C copy, Encumbrance certificate, Mutation register and other required documents within 3 months and requested the plaintiff after receiving the all documents and obtain registered sale deed and pay the balance sale consideration amount to him, but since the plaintiff has not having money with him, to pay balance of sale consideration, the plaintiff started to give unnecessary reasons. Therefore, he issued legal notice to him as per Ex.P.2, calling upon the plaintiff to obtain registered sale deed, which duly served upon him. Ex.P.2 itself shows that

plaintiff was not at all ready and willing to perform his part of contract.

20. The defendant has produced Ex.D.4 is 11-E sketch map and R.T.Cs pertaining to the suit land at Exs.D.5 and 6 which all shows that, he is get ready to execute the registered sale deed in favour of plaintiff. Further, Ex.P.17 R.T.C., Ex.P.19 Atlas map are also ready to execute the registered sale deed.

21. As per Ex.P.16 of Specific Relief Act; Specific performance of a Contract cannot be enforced in favour of a person - who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation:- For the purpose of clause (c) -

i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court

ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true constructions.

22. In the present case, the plaintiff has kept quite till receipt of notice as per Ex.P.2 by the defendant calling upon him to pay the remaining balance consideration amount and get execute the registered sale deed. Ex.P.6 shows that the plaintiff is unable to pay the remaining balance amount and asking for return of advance amount which paid by him. The suit itself shows that the plaintiff intending to recover the amount from the defendant.

23. As per Ex.P.1. The agreement of sale the terms and conditions of the contract that within 3 months, the defendant obtain the all necessary documents mentioned in the agreement and ready for registration of sale deed. Nowhere, it is mentioned about in case of non performance of contract either of the party the advance amount will be forfeited. Though the defendant has pleaded in his notice about forfeited of advance amount, since the plaintiff is not ready to perform his part of contract. In the cross examination of D.W.1 he admits that no such condition is mentioned in Ex.P.1. He further admits that in the absence of such condition he pleaded in Ex.D.1 notice about forfeit of advance amount. He further admits that in reply notice as per Ex.P.3 the plaintiff stated that he has not authority to forfeit the advance amount. Therefore, in such circumstances even though the plaintiff has made a breach of contract he is not entitled to receive the advance

amount from the defendant. Accordingly, I answered **issue No.2** in **partly affirmative** and **additional issue No.2** in **negative**.

24. ISSUE NO.1 AND ISSUE No.3:- In view of reasons assigned in issue No.2 and additional issue No.1 and 2 and findings on those issues it is clear that defendant has executed Ex.P.1 agreement of sale in favour plaintiff for the sale consideration amount of Rs.51,20,000/- by receiving advance sale consideration of Rs.17,50,000/- from the plaintiff. Further, the defendant has proved that plaintiff himself as committed breach of contract and he is not ready and willing to perform his part fo contract. Further, the plaintiff is proved that defendant had agreed to return the advance sale consideration amount of Rs.17,50,000/- with an interest at the rate of 1.5 % per month. With respect of interest, the plaintiff has claimed current and future interest at the rate of 1.5% per month is very high and exorbitant. The amount claimed by the plaintiff is advance amount paid by him to the defedant. Hence, by considering the present days loan interest and FD rate of interest in the nationalized banks, it is just and proper that the plaintiff is only entitled interest at the rate of 12% p.a., In view of all above reasons and discussion, I answered **Issue No.1 and 3** in **partly Affirmative**.

25. ISSUE NO.4: In view of the findings on the issues, I proceed to pass the following.

O R D E R

The suit of the plaintiff is partly decreed.

The defendant is hereby directed to return advance amount of Rs.17,50,000/- along with interest at the rate of 12% p.a., from the date of sale agreement till its realization with costs.

Defendant is directed to pay or deposit the decreed amount within two months from this date.

Office is to draw a decree accordingly.

(Dictated to the stenographer directly on the computer, typed by him, corrected and then pronounced by me in the Open Court on this 9th day of July, 2026)

(PARVEEN A BANKAPUR),
Senior Civil Judge,
T. Narasipura.

A N N E X U R E

1. WITNESSES EXAMINED FOR THE PLAINTIFF:-

P.W.1 : Ravinayaka.
P.W.2 : Shivanna.

2. DOCUMENTS MARKED FOR THE PLAINTIFF:-

Ex.P.1 : Registered agreement of sale dated 14.10.2018.
Ex.P.2 : Legal notice dated 08.05.2017.
Ex.P.3 : Reply notice dated 11.05.2017.
Ex.P.4 : 2 Postal receipts.
Ex.P.5 : 2 Postal acknowledgments.
Ex.P.6 : Legal notice dated 23.05.2017.
Ex.P.7 : One postal receipt.
Ex.P.8 : One postal acknowledgment.
Ex.P.9 : Legal notice dated 17.06.2017.
Ex.P.10 : Reply notice dated 24.06.2017.
Ex.P.11 : 2 Postal receipts
Ex.P.12 : 1 Postal acknowledgment.
Ex.P.13 : Encumbrance certificate.
Ex.P.14 : R.T.C of Sy.No.26/2.
Ex.P.15 : Copy of M.R. No.T1.
Ex.P.16 : Copy of M.R. No.T3.
Ex.P.17 : R.T.C of Sy.No.26/2.
Ex.P.18 : Copy of M.R.H. No.10/2018-2019.
Ex.P.19 : Atlas.

Ex.P.20 : Copy of Mutation register.
Ex.P.21 : R.T.C of Sy.No.27/5.
Ex.P.22 : Copy of mutation register.

3. WITNESS EXAMINED FOR THE DEFENDANT:-

D.W.1 : T.T. Parthasarathi.

4. DOCUMENTS MARKED FOR THE DEFENDANT:-

Ex.D.1 : Legal notice date 08.05.2017.
Ex.D.2 : Postal acknowledgment.
Ex.D.3 : Reply notice.
Ex.D4 : 11-E sketch.
Exs.D.5 & 6 : R.T.C of Sy.Nos.26/2 and 27/5.

(PARVEEN A BANKAPUR)
SENIOR CIVIL JUDGE,
T. NARASIPURA.

(Separate Judgment is passed and pronounced in the open court)

ORDER

The suit of the plaintiff is partly decreed.

The defendant is hereby directed to return advance amount of Rs.17,50,000/- along with interest at the rate of 12% p.a., from the date of sale agreement till its realization with costs.

Defendant is directed to pay or deposit the decreed amount within two months from this date.

Office is to draw a decree accordingly.

Senior Civil Judge,
T. Narasipura.