

IN THE COURT OF THE ADDL.SR.CIVIL JUDGE & J.M.F.C-I
AT: RAICHUR.

PRESENT:

Sri. Patil Veeranagouda.S.

B.Com. LL.M

Addl. Sr. Civil Judge & JMFC-I.

Original Suit No: 38/2017

Dated this the 1st day of August, 2017

PLAINTIFF: Sri. N.C. Jain S/o Sri. Bastimal Jain, age: 57 years,
occ: business, R/o 10-4-78, Maktalpet, Gunj road,
Raichur.

(By Sri. M.K. Daftari, Advocate)

//Versus//

DEFENDANT: Sri. Shaik Ahmed Hussain S/o late. Moinuddin,
aged about: 36 years, occ: business, R/o House
No.1-6-183, Indira Nagar, Raichur.

(By Sri. R. Gouse Pasha, Advocate)

Date of Institution of the suit. 18-02-2017.

Nature of the suit. Suit for specific performance of
contract.

Date of the commencement of
recording of the evidence. 23-06-2017.

Date on which the Judgment
was pronounced. 01-08-2017.

Total Duration	Year/s	Month/s	Day/s
	00	05	13

JUDGMENT

The plaintiff has filed this suit for specific performance of contract.

2. The case of the plaintiff is that defendant had offered to sell the suit property bearing Mpl.No.1-6-148 (old), 1-6-183 (new), measuring: 63' x 23' i.e. 1449 sq. feet, having a plinth of 1104 square feet, situated at Indira nagar, Raichur for his legal and family necessities for sale consideration of ₹ 7,50,000/- and executed registered agreement of sale on 26-2-2014 by receiving earnest money of ₹ 5,00,000/- from plaintiff. The defendant had agreed to receive the balance sale consideration of ₹ 2,50,000/- at the time of registration and handing over the vacant possession of the suit schedule property in favour of plaintiff within 2 years.

3. It is further averred that defendant was to furnish original documents of his title, Khata extract and nil encumbrance certificate etc., but he has failed and did not bother to furnish the same, in this regard the plaintiff has repeatedly called upon him and informed by issuing notice on 25-6-2015 that he is ready and willing to pay balance sale consideration of ₹ 2,50,000/- but the defendant went on

dodging the matter on one or other pretext. After long gap the plaintiff issued final notice to the defendant on 31-1-2017, calling upon the defendant to receive balance sale consideration and execute the sale deed, but the defendant has not chosen to reply to the said legal notice. The plaintiff is always ready and willing to pay balance sale consideration and perform his part of the contract, there is no breach of contract on the part of the plaintiff, but it is the defendant who is dodging the matter and thus committed breach of contract. Hence this suit.

4. In pursuance of the summons, the defendant appeared through his counsel but not filed his written statement, as such case was posted for plaintiff's evidence.

5. In order to prove his case the plaintiff got examined himself as PW-1 and got marked Exs.P-1 to P-7 and closed his side evidence.

6. Heard advocate for the plaintiff, inspite of giving sufficient time, the defendant has not submitted his argument, as such case was posted for judgment with a liberty to file written arguments. In spite of that till today the defendant neither submitted oral nor written argument.

7. On perusal of the record, the points that would emerge for consideration of this court are as follows:

- 1) Whether the plaintiff proved that the defendant has executed an agreement of sale on 26-2-2014 agreeing to sell the suit schedule property for ₹ 7,50,000/- in favour of the plaintiff by receiving earnest money of ₹ 5,00,000/- on the same day?
- 2) Whether plaintiff further proved that he is ever ready and willing to perform his part of contract?
- 3) Whether the plaintiff proved that the defendant has failed to perform his part of contract by receiving remaining sale consideration?
- 4) Whether the plaintiff is entitled for the relief as sought for?
- 5) What order or decree?

8. My answer to the above points are as follows:

- | | |
|-------------|--|
| Point No-1: | In the affirmative |
| Point No-2: | In the affirmative |
| Point No-3: | In the affirmative |
| Point No-4: | In the affirmative |
| Point No-5: | As per final order, for the following: |

REASONS

9. **Points No-1 to 4:** All these points are interlinked with each other, in order to avoid repetition of facts said points are taken up together for consideration.

10. The case of the plaintiff is that the defendant offered to sell the suit schedule property for his legal and family necessities for consideration of ₹ 7,50,000/- and executed registered agreement of sale in favour of the plaintiff on 26-2-2014 agreeing to sell the same and received advance of ₹ 5,00,000/- on the same day and agreed to execute the sale deed after receiving remaining sale consideration of ₹ 2,50,000/- from the plaintiff. The plaintiff is ever ready and willing to perform his part of contract by keeping balance consideration but the defendant went on dodging the matter on one or the other pretext, at last plaintiff has issued notice through his lawyer on 25-6-2015. After service of said notice the defendant approached the plaintiff and requested some time stating that as the related documents are with his friend, trusting his words plaintiff has waited a long time but the defendant has not turned up. Finally the plaintiff has issued another notice on 31-1-2017 calling upon the defendant to execute the sale deed by receiving remaining consideration. In spite of service of notice, the defendant neither replied nor complied, therefore the plaintiff has filed this suit.

11. In order to prove his case the plaintiff has sworn to his affidavit to the above effect and got marked in all seven documents as per

Exs.P-1 to 7. Ex.P-1 is the registered agreement of sale executed by defendant in favour of plaintiff, Ex.P-2 is the office copy of the notice dated: 25-6-2015. Ex.P-3 is the postal receipt, Ex.P-4 is the postal acknowledgment, Ex.P-5 is the office copy of the notice dated: 31-1-2017, Ex.P-6 is the postal receipt and Ex.P-7 is the postal report for having served the said notice to the defendant. The entire oral as well as documentary evidence produced by the plaintiff remained unchallenged.

12. On the basis of the above documents the advocate for the plaintiff has argued at length that the defendant being the owner of the suit schedule property for his family and legal necessity agreed to sell the suit property for ₹ 7,50,000/- and executed Ex.P-1 on 26-2-2014 after receiving ₹ 5,00,000/- as earnest money and agreed to execute the sale deed after receiving remaining consideration of ₹2,50,000/- within 2 years. Thereafter the defendant has not keep up his words and inspite of notice issued by him as per Exs.P-2 & 5, the defendant has not came forward to execute the sale deed. On the other hand the plaintiff is ever ready with balance consideration of ₹2,50,000/- therefore, he prayed to decree the suit.

13. Having heard arguments from advocate for the plaintiff and on perusal of Ex.P-1, it clearly depicts that defendant being the owner of the suit schedule property has executed a registered agreement for sale without possession in favour of plaintiff on 26-2-2014 agreeing to sell the same for ₹ 7,50,000/- and also received ₹ 5,00,000/- as an earnest money on the same day and agreed to execute the sale deed within 2 years after receiving remaining consideration of ₹ 2,50,000/-. Ex.P-2 being the office copy of the notice issued by the plaintiff through his counsel on 25-6-2015 calling upon the defendant to execute the sale deed by receiving remaining sale consideration. The said notice is served on the defendant which could be seen from Ex.P-4 the postal acknowledgment. Ex.P-5 being the office copy of the final notice issued by the plaintiff through his counsel to the defendant and same is appears to be delivered on 3-2-2017 to the defendant as per the postal report as per Ex.P-7.

14. The plaintiff has also produced the photocopy of the gift deed dated: 16-7-2011 executed by one Ahmed Hussain S/o Moinuddin in favour of the defendant in respect of the suit property and its Khata extract, therefore there is no doubt that the defendant is the owner of the suit schedule property as on the date of the execution of Ex.P-1.

Ex.P-1 is agreement for sale without possession which was registered document and absolutely there is no contra evidence produced by the defendant in order to disbelieve the said document. Hence the plaintiff has clearly proved execution of Ex.P-1 by the defendant in favour of the plaintiff.

15. Coming to the second important aspect of readiness and willingness of the plaintiff to perform his part of contract the plaintiff by issuing the notice as per Ex.P-2 shown his readiness and willingness to perform his part of contract since 25-6-2015, which is the date of issuance of the notice. In spite of service of the said notice it appears that defendant not performed his part of contract therefore, as per Ex.P-5 the plaintiff has also issued another notice stating it as final notice on 31-1-2017, inspite of service of said notice also the defendant has not turned up. These documents clearly goes to show that the plaintiff is ever ready and willing to perform his part of contract by keeping ready with ₹ 2,50,000/- as remaining sale consideration and interested in getting execution of registered sale deed from the defendant in respect of the suit property.

16. The attitude of the defendant as per the available records appears that he is not at all intend to comply with the terms of agreement. Even the defendant appeared through his counsel but not bothered to file his written statement and contest the matter. So, the plaintiff has proved his case by producing cogent and convincing evidence, on the other hand, absolutely there is no material to disbelieve the version of the plaintiff. Hence, the plaintiff has proved the above points without any shadow of doubt. Therefore, I have answered above points in the affirmative.

17. Point No-5: For the foregoing reasons and my findings to the above points, I proceed to pass the following:

ORDER

Suit of the plaintiff is hereby decreed with costs.

The defendant is hereby directed to execute the registered sale deed in respect of suit schedule property by receiving balance sale consideration of ₹ 2,50,000/- from the plaintiff within one month and hand over its possession.

If the defendant failed to do so, the plaintiff
is at liberty to get it executed through court of
law.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by him, corrected and pronounced by
me in the open court on this the 1st day of August, 2017).

(Patil Veeranagouda.S.)
Addl. Senior Civil Judge & JMFC-I
Raichur.

ANNEXURE

WITNESSES EXAMINED FOR THE PLAINTIFF:

PW-1: N.C. Jain S/o Sri. Bastimal Jain.

WITNESSES EXAMINED FOR THE DEFENDANT:

-NIL-

DOCUMENTS MARKED FOR THE PLAINTIFF:

Ex.P-1: Registered agreement of sale.
Ex.P-2: Office copy of legal notice dt: 25-6-2015.
Ex.P-3: Postal receipt.
Ex.P-4: Postal acknowledgment.
Ex.P-5: Office copy of legal notice dt: 31-1-2017.
Ex.P-6: Postal receipt.
Ex.P-7: Postal endorsement.

DOCUMENTS MARKED FOR THE DEFENDANT:

-NIL-

(Patil Veeranagouda.S.)
Addl. Senior Civil Judge & JMFC-I
Raichur.

***ssp**