



IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,
AT SINDHANUR

Present :- SRI. LAKSHMIKANTH JANAKIRAM MISKIN, M.A., LL.M
Senior Civil Judge & J.M.F.C.
Sindhanur

O. S. No.65/2020

Dated: 01st day of July 2026

PLAINTIFF: - 1) M. Narasimha Rao S/o MVSN Apparao
Age: 51 years, Occ: Agri.,
R/o Marlanhalli, Tq. Gangavathi, now
Karatagi Taluka, Dist. Koppal

(Represented by: Sri. JR., Advocate)

-Vs -

DEFENDANTS:-1) Hanumanthappa S/o Balappa Aarapur
Age: 40 years, Occ: Agri.,
R/o Karatagi, Tq. Gangavathi, now
Karatagi Taluka, Dist. Koppal
Second address:
Hanumanthappa S/o Balappa Arapur
Age: 40 years, Occ: Agri., owner of
Kanakachala Agro Agency, R/o Karatagi
Tq. Karatagi, Dist. Koppal

(Represented by: Sri.ISK., Advocate)



Date of Institution of the suit : 21.03.2020
Nature of the suit : Specific performance
Date of the commencement
of recording of evidence : 04.01.2024

Date on which the Judgment
is pronounced : 01.07.2026

Total duration : Year/s Month/s Day/s
06 03 10

J U D G M E N T

This suit filed by the plaintiff against the defendants seeking direction to the defendant to execute registered sale deed in favour of plaintiff in respect of suit property.

2. The plaint in brief is as under:-

The defendant is the owner and possessor of agricultural land bearing sy.no.91*/*1B1, measuring 6 acres 16 gunta, having R.A Rs.9.09 paisa situated at Channalli village of Gorebal revenue circle, tq. Sindhanur. The defendant has agreed to sell the suit land to the plaintiff to discharge his family necessities and for repayment of loan for a total consideration amount of Rs. 19,50,000-00. The plaintiff accepted the same. In furtherance of said contract



the plaintiff on 17.03.2017, in presence of attesting witnesses, paid a part consideration of Rs. 19,00,000-00 through cash to defendant and the defendant accepted the same and executed the written agreement of sale on 17.03.2017 in presence of plaintiff, attesting witnesses and scribe of the deed. The said amount was accepted by defendant in presence witnesses to the deed and scribe of the deed. The defendant after accepting the said amount executed written agreement of sale on 17.03.2017 in presence of witnesses namely E. Raviprasad S/o. E. Sriramulu, and Chandrashekhar S/o.Sanna Mudukappa Palled, both R/o. R/o. Marlanahalli, tq.Gangavathi and the scribe. The said deed was registered on the same in the office of Sub-registrar, Sindhanur, as document no. 19173/2016-17. As per the terms of agreement between plaintiff and defendant, it was agreed that the defendant would execute and register the sale deed in respect of suit land by receiving the balance consideration of Rs.50,000-00, whenever called by this plaintiff It was agreed that the defendant would put the plaintiff in actual physical possession of the suit land on the date of registration of sale deed. The defendant further assured that there are no dues or encumbrance over the suit land. If any dues are found the defendant would discharge



them at his own costs and would deliver nil encumbrance and no due certificate pertaining to suit land at the time of registration of sale deed. The plaintiff as per the terms and conditions of agreement was ready and willing to pay the balance consideration amount of Rs.50,000-00. As per the said conditions, the plaintiff several times approached the defendant with a balance consideration amount of Rs.50,000-00 and requested the defendant to all necessary documents, and to receive the balance amount of Rs.50,000-00. But the defendant post pone the same by one or other pretext. The plaintiff again on 21.12.2019 approached the defendant with balance consideration amount of Rs.50,000-00 and demanded the defendant to produce all required documents of the suit land as agreed and receive balance consideration amount and to execute and register the sale deed of suit land in his favour, but the defendant did not heed to the request of plaintiff. The plaintiff without other go on 30.12.2019 got issued a legal notice to the defendant posted on 31.12.2019 through his counsel calling upon to defendant to produce all necessary and register sale deed in respect of suit land, by receiving balance consideration amount of Rs.50,000-00. The legal notice issued to the correct address of the defendant, the defendant refused to receive the said legal



notice. Office copy of legal notice and returned postal cover containing legal notice are filed herewith for the kind perusal of this court. The defendant did not come forward to produce and execute and register sale deed by receiving the balance consideration amount. So the plaintiff without other go approached this court by way of this suit. It is further submitted, the defendant is under the contractual obligation to perform his part of contract by producing necessary documents in respect of suit land and to execute the register sale deed of suit land. The plaintiff was and is always ready and willing to perform his part of contract of getting register sale deed by paying the remaining balance of Rs.50,000-00. But the defendant is not ready to perform his part of contract. The cause of action for the suit arose on 17.03.2017 being the date of execution and registration of agreement sale and on 21.12.2019 being the date of refusal of execution of sale deed and on 30/31-12-2019 being the date of issual of legal notice to the defendant and the same is continuing one within the jurisdiction of this court. Hence, the plaintiff is constrained to file this suit and pray for decreed the suit.

3. In response to the summons, the defendant has appeared through his counsel and filed written statement.



4. **The brief facts to written statements filed by the Defendant:-**

In the written statement the defendant submitted that the contents of the para No:1 of the plaint is pertaining to the address of the plaintiff, and his counsel, hence needs no reply. The contents of the para No:2 of the plaint is regarding the ownership and possession of the suit land by the defendant. Same is true and correct. The contents of the para No:3 of the plaint is false and baseless. That it is false to say that, the defendant agreed to sell the suit land to the plaintiff to discharges his family necessities and for repayment of loan for a total consideration amount of Rs. 19,50,000/- and plaintiff accepted the same. In fact, the defendant has availed the loan of Rs.3,00,000/- as loan from the plaintiff towards the development of his suit land. The contents of the para No:4 of the plaint is false and baseless. That it is false to say that, the plaintiff on 17.03.2017 has paid Rs. 19,00,000/- to the defendant in presence of witness as part consideration amount through cash to defendant and defendant accepted the same and executed the written agreement of sale on 17.03.2017 in doc No:19173/2016-17. All the allegations in the said para are all false and baseless. IN fact, the defendant has availed loan of Rs. 3,00,000/- only



from the plaintiff. But the plaintiff has intimated that, the market value of the said land is more as such he will mention Rs.19,00,000/-. IN fact the actual amount borrowed by the defendant is only Rs.3,00,000/-. The defendant has no necessity of such a huge amount of loan. The defendant has not at all availed such a huge amount from the plaintiff. The said land is only land to the defendant family. That no person will transact such a huge amount in cash, which is violation of the law, wherein there is cap for cash transaction. Thus there is no such a huge amount of transaction between the plaintiff and defendant. The plaintiff has paid only Rs.3,00,000/- in cash and not the amount as mentioned in the said agreement of sale. The contents of the para No:5 of the plaint is false and baseless. That it is false to say that, the defendant agreed to execute regd sale deed of suit land in favour of the plaintiff by receiving the consideration amount of Rs. 50,000/- whenever called by the plaintiff. The defendant never agreed to conclude the contract or receive balance consideration amount. The contents of the para No: 6 of the plaint is false and baseless. That it is false to say that, the defendant agreed to put the plaintiff in possession of the suit land on the date of registration of sale deed and further assured that the suit land has no dues or encumbrances and if



found he will clear them. All these allegations are false and base. The defendant never agreed for the same. The contents of the para No:7 of the plaint is false and baseless. That it is false to say that, plaintiff several times approached the defendant with balance consideration amount and defendant postponed the same. In fact, the defendant after availing the said loan amount has repaid the entire amount with accrued interests on second year from the date of execution of the sale agreement. Thereafter the defendant several times requested the plaintiff to cancel the said agreement of sale for which the plaintiff went on postponed the same on one or other pretext. The plaintiff went on assigned that, the original document is missing and other reasons to postpone the execution of cancellation deed. The contents of the para No:8 of the plaint is false and baseless. That it is false to say that, on 21.12.2019 the plaintiff approached the defendant with balance consideration amount but the defendant did not heed the request. In fact the plaintiff never approached the defendant. It is the defendant who frequently approached the plaintiff for cancellation of agreement of sale and he postponed the same on one or other pretext. The contents of the para No:9 of the plaint is false and baseless. That it is false to say that, the plaintiff has sent legal notice to the



defendant. It is the Gumasta of the defendant by name Manjunath, Basavaraj and plaintiff have colluded with each other and evaded service of legal notice to the defendant, which is not within the knowledge of the defendant. Said Manjunath and Basavaraj are the henchmen of the plaintiff and they both are mingled with each other in causing harm to this defendant. The said Manjunatha and Basavaraj by colluding with plaintiff, they both have also filed false suits against the defendant in OS No: 71/2021 and 72/2021, by creating false agreements against the defendant. The contents of the para No:10 of the plaint is false and baseless. It is the defendant who frequently approached the plaintiff for cancellation of agreement of sale and he postponed the same on one or other pretext. The contents of the para No:11 of the plaint is false and baseless. That the entire transaction is loan transaction. The defendant borrowed money of only Rs.3,00,000/-. Further the defendant has repaid the entire loan amount with accrued interest within second year from the date of execution of the said agreement of sale. Whenever the defendant repaid the amount, the plaintiff noted down the entries in his book and took signature of the defendant. After repayment of entire loan amount with interest the plaintiff stated that said loan amount is now



closed. Thereafter he abstained from executing the cancellation deed. The plaintiff has no cause of action to file this suit. The plaintiff with malafide intention to grab the valuable property of the defendant has come up with this suit. The with sole intention to usurp the valuable property of the defendant the plaintiff has come up with this suit. Hence the said suit is fit to be dismissed. The plaintiff unnecessarily paid court fee, he is not entitled for any relief as prayed. The plaintiff wrongly mentioned his occupation as only agriculturist. In fact he is a money lender without having valid license. There are several cases pending against the plaintiff before Gangavathi Court in EP N: 72/2019, RA No:24/2017. The defendant for his business necessities and also for development of suit land, has availed loan of Rs.3,00,000/- from the plaintiff. The plaintiff considering the urgency of the defendant, has intentionally pressed the defendant to execute regd agreement of sale of suit land in his name. Due to his urgent financial necessity, the defendant unwillingly agreed to execute regd document. The plaintiff has intentionally mentioned the market value of the suit land. The defendant has repaid the said amount on several occasions. The plaintiff all those times noted down the entry in his book, and also took signature of defendant. After



repayment of said entire amount with accrued interest, the plaintiff did not come forward to cancel the said document. That after filing of the suit and service of suit summons, the defendant approached the plaintiff with two witnesses and enquired about the said suit. But the plaintiff demanded extra Rs.50,000/- for which the defendant unwillingly accepted to pay such a huge amount. In spite of that, the plaintiff did not withdraw the suit. Thereafter again on 01-10-2022 the defendant approached the plaintiff with said amount of Rs.50,000/- and enquired the plaintiff about withdraw the said amount, for which the plaintiff demanded Rs. 5,00,000/- towards court fees, advocate fee etc. The defendant expressed his inability to pay such huge amount, for which the plaintiff stated he will usurp the entire suit land on the basis of the said agreement of sale. The plaintiff is not entitled for relief of specific performance of contract. The defendant is not the absolute owner of the suit land, and said property is family property of the defendant. The defendant is having sufficient means to lead his life and he has no occasions alienate the suit land for such big amount. Hence, prays to dismiss the suit of the plaintiff.



5. Heard arguments on behalf of the plaintiffs. On the basis of the above pleadings, the following issues arises for my consideration;

ISSUES

1. Whether the plaintiff proves that defendant executed agreement of sale dated: 17-03-2017 agreeing to sell the suit land for Rs.19,50,000/- by receiving Rs.19,00,000/- as part consideration amount?
2. Whether the defendant proves that he borrowed Rs.3,00,000/-from the plaintiff and repaid the same with interest and the suit agreement was executed as security towards loan amount and it is not on and on agreement of sale?
3. Whether the plaintiff proves that he is ready and willing to perform his part of contract?
4. Whether the present suit is filed within the period of limitation?
5. Whether the plaintiff is entitled for relief sought and However plaintiff is entitled for refund the earnest money?



What Order or Decree?

6. To prove his case, the plaintiff examined himself as Pw-1 and examined 02 witness as Pw-2 and Pw-3. All documents produced by the plaintiff marked as Ex.P1 to Ex.P6 and closed their side evidence. The defendant himself examined as Dw-1 and no documents got marked and closed his side evidence.

7. My answerer to the above Issues as follows:

Issue No.1 : In the Negative
Issue No.2 : In the Affirmative
Issue No.3 : In the Negative
Issue No.4 : In the Negative
Issue No.5 : In the Negative
Issue No.6 : As per final order for the following:

REASONS

8. **ISSUES NO.1 TO 3** :- It is the specific case of the plaintiff that the defendant is the owner and possessor of agricultural land bearing sy.no.91*/*1B1, measuring 6 acres 16 gunta, having R.A Rs.9.09 paisa situated at Channalli village of Gorebal revenue circle, tq. Sindhanur. It is the specific case of the plaintiff that the defendant has agreed to



sell the suit land to the plaintiff to discharge his family necessities and for repayment of loan for a total consideration amount of Rs. 19,50,000-00. The plaintiff accepted the same. It is the specific case of the plaintiff that the plaintiff on 17.03.2017, in presence of attesting witnesses, paid a part consideration of Rs. 19,00,000-00 through cash to defendant and the defendant accepted the same and executed the written agreement of sale on 17.03.2017 in presence of plaintiff, attesting witnesses and scribe of the deed. The said amount was accepted by defendant in presence witnesses to the deed and scribe of the deed. The defendant after accepting the said amount executed written agreement of sale on 17.03.2017 in presence of witnesses namely E. Raviprasad S/o. E. Sriramulu, and Chandrashekhar S/o.Sanna Mudukappa Palled, both R/o. R/o. Marlanahalli, tq.Gangavathi and the scribe. The said deed was registered on the same in the office of Sub-registrar, Sindhanur. It is the specific case of the plaintiff that as per the terms of agreement between plaintiff and defendant, it was agreed that the defendant would execute and register the sale deed in respect of suit land by receiving the balance consideration of Rs.50,000-00, whenever called by this plaintiff. It is the specific case of the



plaintiff that the defendant would put the plaintiff in actual physical possession of the suit land on the date of registration of sale deed. The defendant further assured that there are no dues or encumbrance over the suit land. If any dues are found the defendant would discharge them at his own costs and would deliver nil encumbrance and no due certificate pertaining to suit land at the time of registration of sale deed. It is the specific case of the plaintiff that plaintiff as per the terms and conditions of agreement was ready and willing to pay the balance consideration amount of Rs.50,000-00. It is the specific case of the plaintiff that the plaintiff again on 21.12.2019 approached the defendant with balance consideration amount of Rs.50,000-00 and demanded the defendant to produce all required documents of the suit land as agreed and receive balance consideration amount and to execute and register the sale deed of suit land in his favour, but the defendant did not heed to the request of plaintiff. It is the specific case of the plaintiff that the plaintiff without other go on 30.12.2019 got issued a legal notice to the defendant posted on 31.12.2019 through his counsel calling upon to defendant to produce all necessary and register sale deed in respect of suit land, by receiving balance consideration amount of Rs.50,000-00. It is the



specific case of the plaintiff that the defendant did not come forward to produce and execute and register sale deed by receiving the balance consideration amount. It is the specific case of the plaintiff that the defendant is under the contractual obligation to perform his part of contract by producing necessary documents in respect of suit land and to execute the register sale deed of suit land. The plaintiff was and is always ready and willing to perform his part of contract of getting register sale deed by paying the remaining balance of Rs.50,000-00. But the defendant is not ready to perform his part of contract.

9. Admittedly the suit land Sy.No. 91/*//1B1, measuring 06 acres 16 guntas, situated at Channalli village, Tq. Sindhanur as shown at registered agreement for sale dated 17.03.2017 marked at exhibit P-1 . The price agreed for sale is just Rs. 19,50,000/- as shown at registered agreement for sale dated 17.03.2017 marked at exhibit P-1. Admittedly the suit land measuring suit land Sy.No. 91/*//1B1, measuring 06 acres 16 guntas, situated at Channalli village, Tq. Sindhanur is valuable and irrigate land commercial crop of rice grown therein. It is made clear by this court for a meager sum of 19,50,000/- consideration as shown at



registered agreement for sale dated 17.03.2017 marked at exhibit P-1, even an open plot cannot be purchased. The consideration shown at registered agreement for sale dated 17.03.2017 marked at exhibit P-1 is considered to be too meager sum of 19,50,000/-. The suit land Sy.No. 91/*//1B1, measuring 06 acres 16 guntas, situated at Channalli village, Tq. Sindhanur. The suit land suit land Sy.No. 91/*//1B1, measuring 06 acres 16 guntas, situated at Channalli village, Tq. Sindhanur is large and irrigate and consideration shown there in is a meager sum of Rs.19,50,000/-.

10. The property for a price that the conscience of this court cannot justify to grant a decree for specific performance of contract. Showing of low price is nothing but an exploitation which really clearly indicates that it is unfair because the fair market value of the property is far far above what has been offered, even assuming the contract as is executed, a Court would refuse enforcement. In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported in 1998 (6) KLJ 547 in between Kareemsaheb Nabeesaheb Nadaf Vs Basavantappa Shankarappa Pattanshetti (deceased) by L.Rs. the para NO.6 of the order reads as under.



Regular Second Appeal No. 139 of 1992

Decided on 28-11-1997

6]. This virtually brings one to the essential issue that is at the core of this dispute namely the question as to whether the doctrine of unconscionability will have to be applied in this case. The doctrine which has its roots in English Law has been enforced by the Courts in this country, though on a few occasions. **The first essential ingredient is that it must be demonstrated that having regard to the economic disparity between the parties which is manifest in the transaction, the agreement becomes unacceptable or unfair insofar as it is a transaction between unequal wherein the effort is to get hold of the property for a price that one's conscience cannot justify.** The basic test and in fact that second principle which the Courts would cull out from a situation such as this is the aspect of exploitation which really flows from the first principle and where the contract clearly indicates that **it is unfair because the fair market value of the property is far far above what has been offered, the Court would**



put itself on guard and even assuming the contract as is executed, a Court would refuse enforcement. It is this principle really that is embodied in the substantial point of law that falls for determination in the present case and to my mind, while Courts are required to exercise judicial discretion the contract would have to pass the test of scrutiny on the rule of fairness and legality. The present record unmistakably indicates that the value of the property would have been more than three times than what has been indicated and also indicates that having regard to the two years period which was prescribed, that the defendant did not really intend or want to sell the property but that he had entered into the agreement because he needed the money in the hope that within the period of two years he would be able to have his house. The whole transaction is a colorable one and once the Court comes to this decision, the enforcement of such an agreement will have to be refused.

The ratio laid down by the Hon'ble High Court of Karnataka reported in (1998) 6 KLJ 547 in between Kareemsaheb Nabeesaheb Nadaf Vs Basavantappa



Shankarappa Pattanshetti (deceased) by L.Rs. it is unfair because the fair market value of the property is far far above what has been offered, the Court would put itself on guard and even assuming the contract as is executed, a Court would refuse enforcement for showing the low price in the agreement for sale.

11. In view of law laid down by the Hon'ble High Court of Karnataka reported in 1998 (6) KLJ 547 in between Kareemsaheb Nabeesaheb Nadaf Versus Basavantappa Shankarappa Pattanshetti (deceased) by L.Rs in the present case also very meager amount of just meager Rs.19,50,000/- suit land Sy.No. 91/*//1B1, measuring 06 acres 16 guntas, situated at Channalli village, Tq. Sindhanur is fixed thus the plaintiff is not entitled for the relief of specific performance of contract. This court cannot permit the plaintiff to enrich at the cost of the defendant. On this ground also the suit of the plaintiff is not maintainable. Hence, issue No.1 answered in Negative, Issue No.2 answered in Affirmative and issue No.3 answered in Negative.



12. **ISSUE NO.4:-** In the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time limits stipulated in the agreement for doing one or the other thing by one or the other party. In the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the court may infer that it is to be performed in a reasonable time if the conditions are from the express terms of the contract , from the nature of the property and from the surrounding circumstances, for example, the object of making the contract . In other words, the court should look at all the relevant circumstances including the time-limit specified in the agreement and determine whether its discretion to grant specific performance should be exercised.



13. In the present case, though the suit is filed within three years from the date of execution of the agreement for sale dated 17.03.2017 marked at exhibit P-1 but the plaintiff did not explain as to why she has to wait for three years for filing the suit. Merely because there is no time prescribed at agreement for sale dated 17.03.2017 marked at exhibit P-1, the plaintiff cannot wait for three years from the date of agreement for sale dated 17.03.2017 marked at exhibit P-1 and file the suit after waiting said period which disentitled her from getting relief for just getting documents including that of preparing of 11E, sketch map as shown there in for prescribing three years period. This fact assumes importance in the wake of the fact that the defendants have denied very execution of agreement for sale dated 17.03.2017 marked at exhibit P-1 on the contrary they have setup plea of loan transaction.

14. In the present the plaintiff has filed the suit though within time as per article 54 of the Limitation Act, 1963, but there is total inaction for a period of three years from the date of agreement for sale dated 17.03.2017 marked at exhibit P-1 in respect of the suit land. Even there is no material is



produced to show that the plaintiff immediately approached the survey authorities for getting suit lands measured for the purpose of preparing 11E sketch map with the help of the plaintiff . There is no application of 11E sketch map is produced to show that the plaintiff has approached immediately after execution of agreement for sale dated 17.03.2017 marked at exhibit P-1 to the revenue authorities requesting them to prepare 11E sketch map immediately. Atleast the there is no material to show that the plaintiff has approached during the said period requesting the defendant to prepare for 11E, sketch map and other necessary documents

15. Settled position in law that whether statute provided for a period of limitation, provisions of the statute must be invoked within a reasonable time. It is held by this court that action whether on an application of the parties, or suo motu, must be taken within a reasonable time. The plaintiff cannot wait till the expiry of period as prescribed in the agreement for sale and file the suit at the fag end of the period after keeping quite for a long period of three years. For nearly two years and ten months long years the plaintiff has not raised his little finger. There is no demand in writing.



As set-out earlier, there is no material placed on record to show that he was ready with the balance sale consideration. The plaintiff has chosen to file the suit a few months prior to the expiry of the period of limitation. In that context, it is not a case of mere delay, it is a case of total inaction on the part of the plaintiff for two years and ten months in clear violation of the terms of the agreement which required him to pay the balance consideration and then ask for execution of the sale deed. In this regard it is beneficial to refer to the decision of the Hon ble High Court of Karnataka reported in ILR 2014 KAR 233 (DB) =[2013 SCC ONLINE KAR 8544 (DB)] =[(2014) 1 KCCR 1 (DB)] =[(2014) 1 AIR KANT R 706] in between Smt. Padmini Raghavan Vs Mr. H.A. Sonnappa the para No.120 reads as under.

RFA No. 1242 of 2003
and
Misc. Civil No. 13365 of 2010.
Dated-11.10.2013.

120]. In the instant case, the agreement stipulates 6 months as the period of stipulation. According to the parties it was reduced to 3 months by way of correction. Subsequently, 3 months has been



made 13 months by way of interpolation. As is clear from the terms of the agreement, out of the sale consideration of Rs. 3,47,100/-, Rs. 75,000/- was paid under the agreement according to the first defendant. According to the plaintiff Rs. 1,75,000/- was paid. According to the interpolated term, Rs. 1,00,000/- has to be paid within 13 months and the balance amount is to be paid within 3 months. As is clear from the terms of the agreement, there is no corresponding obligation which is to be performed by the first defendant before the plaintiff pays the balance consideration agreed upon. Within the time stipulated plaintiff has not pointed out to the defendant No. 1 what is the obligation she was expected to perform so that the plaintiff could pay the balance consideration and obtain a sale deed. In the evidence an attempt is made to contend that, in the agreement of sale it is mentioned that the balance consideration was payable only after the property is surveyed and the sale deed is to be executed. There is no such recital in the sale deed. On the contrary, the recital is, it is the responsibility of the first defendant to get the measurement of the property done



and boundaries fixed. She has already handed over Xerox copies of all the documents of title. The said survey and fixing the boundary was not a condition precedent for the plaintiff to pay the balance sale consideration as contended. Therefore, the plaintiff ought to have paid the balance consideration according to them within 13 months, according to the first defendant within 3 months. However, the plaintiff has not paid the amount even according to his own case. It is because he did not possess the requisite money, he agreed to the cancellation of the sale deed. Consequently, the first defendant sold the property and from the consideration received the first defendant instead of forfeiting the amount has returned Rs. 75,000/- received under the agreement of sale to the plaintiff. It is in this context, if really the plaintiff has paid Rs. 1,75,000/- as contended by them and was ready and willing to pay the balance amount of Rs. 1,72,100/- within 13 months **and if the defendant has not come forward to execute the sale deed, though time is not the essence of the contract, the suit for specific performance ought to have filed within a**



reasonable time. It is here for nearly two long years the plaintiff has not raised his little finger. There is no demand in writing. As set out earlier, there is no material placed on record to show that he was ready with the balance sale consideration. The plaintiff has chosen to file the suit few days prior to the expiry of the period of limitation. In that context, it is not a case of mere delay, it is a case of total inaction on the part of the plaintiff for two years in clear violation of the terms of the agreement which required him to pay the balance consideration and then ask for execution of the sale deed. Further, as the plaintiff was badly in need of money after cancelling the agreement of sale, she has proceeded to sell the property to defendants 2 to 4. They have purchased the property for a valuable consideration. The second defendant has purchased it on the assumption that the suit agreement is cancelled. In so far as defendants 3 and 4 are concerned, they are not aware of the agreement of sale at all. As the defendants 2 to 4 have purchased the schedule property for valuable consideration and have taken possession of the property and have invested money for its



improvement coupled with the fact that the mutation entries are made in their name, they are paying taxes, **the delay in filing the suit has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.** Moreover, when the plaintiff has not come to the Court with clean hands, he has interpolated the material terms of the agreement of sale, certainly such conduct disentitles the plaintiff from invoking the discretionary relief of specific performance at the hands of this Court.

The ratio laid down by the the Hon'ble High Court of Karnataka reported in ILR 2014 KAR 233 (DB)] =[2013 SCC ONLINE KAR 8544 (DB)]] =[(2014) 1 KCCR 1 (DB)] =[(2014) 1 AIR KANT R 706 (DB)] =[2014 AIR CC 1079 (DB)] in between Smt. Padmini Raghavan Vs Mr. H.A. Sonnappa, since dead by his LRs and Others is that if the defendant has not come forward to execute the sale deed, though time is not the essence of the contract, the suit for specific performance ought to have filed within a reasonable time the delay in filing the suit has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff. As discussed above, in the



present case, the plaintiff has filed the suit though within time as per article 54 of the Limitation Act, 1963, but there is total inaction for a period of two years and ten months from the date of execution of agreement for sale dated 17.03.2017 marked at exhibit P-1 in respect of the suit land this disentitled the plaintiff from obtaining the discretionary relief of specific performance of the contract

16. It is made clear by this court that even where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in AIR 1997 SC 1751 = [1997 (1) SCALE 739 = [(1997) 3 SCC 1] in between K.S. Vidyanadam and Others Vs. Vairavan the para No.13 read as under as under.

Civil Appeal No. 7467 of 1996.
Dated-06.02.1997



13]. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2½ years in clear violation of the term of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices - according to the defendants, three times - between the date of agreement and the date of suit notice.

The ratio laid down by the the decision of the Hon'ble Supreme Court of India reported in AIR 1997 SC 1751 = [1997 (1) SCALE 739 = [(1997)3 SCC 1] in between K.S. Vidyanadam and Others Vs. Vairavan is that where there is a delay caused it would be inequitable to give the relief of specific performance to the plaintiff. In the present case, although time is not shown in agreement for sale marked at Ex.P1, but suit is not filed after 3 years period of its execution, hence suit is barred by law of limitation. Hence, Issue No.4 answered in Negative.

17. **ISSUE NO.5:-** The Hon'ble Supreme Court of India in the case of Parakunnnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's son and others AIR 1987 SC 2328 to



canvass the proposition that specific performance should not be granted when litigation is used as an instrument of oppression to have an unfair advantage. Once again there is no dispute to this proposition of law, however, facts of each case have to be seen whether an unfair advantage is being derived so that the specific performance should be refused. The Hon'ble Supreme Court of India in the case of Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's son and others AIR 1987 Supreme Court 2328 held that the proposition that specific performance should not be granted when litigation is used as an instrument of oppression to have an unfair advantage. Once again there is no dispute to this proposition of law, however, facts of each case have to be seen whether an unfair advantage is being derived so that the specific performance should be refused. the Hon 'ble Supreme Court of India reported in 1987 AIR SC 2328 in between Parakunnan Veetill Joseph's Son Mathew Vs. Nedumbara Kuruvila's Son and Ors is that Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance.



18. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. In this regard it is beneficial to refer to the Hon'ble Supreme Court of India reported in AIR 1987 SC 2328, = [1987 Supp (1) SCC 340] in between Parakunnan Veetill Joseph'S Son ... vs Nedumbara Kuruvila'S Son And Ors the para No.14 read as under. .

Civil Appeal No. 1109 of 1975.
Dated. 14.09.1987

14]. [Section 20](#) of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation



should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruvila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the agreement for sale Ex A1. Since Chettiar had waived his rights there under, Varghese as an assignee could not get a better right to enforce that agreement. He is, therefore, not entitled to a decree for specific performance.

The ratio (underline emphasized by me) laid down by the Hon'ble Supreme Court of India reported in reported in AIR 1987 SC 2328, =[1987 Supp (1) SCC 340] in between Parakunnnan Veetill Joseph'S Son vs Nedumbara Kuruvila'S Son And Ors is that the Court should meticulously consider all facts and circumstances of the case and the Court is not bound to grant specific performance merely because it is lawful to do so. Further the Hon'ble Supreme Court of India



held that the motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff.

19. In the present case also as discussed above, in the present case also very meager amount of just meager Rs.19,50,000/- for suit land Sy.No. 91/*//1B1, measuring 06 acres 16 guntas, situated at Channalli village, Tq. Sindhanur is fixed as shown at registered agreement for sale dated 17.03.2017 marked at exhibit P-1, thus the plaintiff is not entitled for the relief of specific performance of contract. This court cannot permit the plaintiff to enrich at the cost of the defendant. On this ground also the suit of the plaintiff is not maintainable.

20. The relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would



take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. The court's discretion to grant specific performance is not exercised to be exercised by this court if the contract is not fair .

21. In the present case the plaintiff pleaded about his readiness and willingness. It is made clear by this court that mere pleadings in the trial court is not sufficient,. The plaintiff has to prove beyond it. The plaintiff has to prove his readiness and willingness to perform his part of the contract. The plaintiff has to show that he has sufficient money in his bank account. It is made clear by this court that mere pleadings are in sufficient to prove readiness and willingness to perform his part of the contract. In this regard it is beneficial to refer to the decision of the Hon 'ble High Court of Karnataka reported in (2020) 1 KCCR 735 =[(2019) 4 AIR KAR R 610] =[2019 SCC ONLINE KAR 1175] =[AIR 2020 (NOC 666) 224] in between Smt.



Pushpalatha v. Sri. D. R. Sadananda Murthy, the para No.46 reads as under.

R.F.A. No. 174 of 2014

and C/W

R. F.A. No. 1896 of 2013.

Dated-19.07.2019.

46. From the above judgments, it is crystal clear that it is not just a plaint averment that the plaintiff was ready and willing to perform his part of the terms of agreement is sufficient to entitle him for the relief of specific performance, but he is also required to prove that he has always been ready and willing to perform his part of the promise under the agreement.

The ratio (underline emphasized by me) laid down by the Hon 'ble High Court of Karnataka reported in (2020) 1 KCCR 735 =[(2019) 4 AIR KAR R 610] =[2019 SCC ONLINE KAR 1175] =[AIR 2020 (NOC 666) 224] in between Smt. Pushpalatha v. Sri. D. R. Sadananda Murthy, is that mere pleadings in the plaint that the plaintiff was ready and willing to perform his part of the terms of agreement is



not sufficient to entitle him for the relief of specific performance, but he is also required to prove that he has always been ready and willing to perform his part of the promise under the agreement by his conduct.

22. Besides it the plaintiff did not produce any documents to show that he has sufficient amount available in his bank account. In a suit for specific performance of contract, the plaintiff must prove that he has sufficient amount in his bank account showing his part of his contract. The plaintiff could have produced bank pass-book or bank statement to show that he has remaining balance consideration amount to show that he has sufficient that he is ready and willing to perform his part of the contract. In this regard it is beneficial to refer to the decision of the Hon 'ble High Court of Karnataka reported in (2020) 1 KCCR 735 =[(2019) 4 AIR KAR R 610] =[2019 SCC ONLINE KAR 1175] =[AIR 2020 (NOC 666) 224] in between Smt. Pushpalatha v. Sri. D. R. Sadananda Murthy, the para No.54 reads as under.

R.F.A. No. 174 of 2014



and C/W
R. F.A. No. 1896 of 2013.
Dated-19.07.2019.

54. Interestingly, in the case on hand, even though it is taken that a Power of Attorney holder can give his evidence on behalf of the plaintiffs, even in a suit for specific performance, still, PW-1 though in his evidence has stated that the plaintiffs were always ready and willing to pay the remaining consideration amount, **but, has not produced any documents to show that the plaintiffs had any financial capacity too, to pay the balance amount or that the funds to pay the balance amount was available with them.**

The ratio (underline emphasized by me) laid down by the Hon 'ble High Court of Karnataka reported in (2020) 1 KCCR 735 =[(2019) 4 AIR KAR R 610] =[2019 SCC ONLINE KAR 1175] =[AIR 2020 (NOC 666) 224] in between Smt. Pushpalatha v. Sri. D. R. Sadananda Murthy, is that in order to prove the readiness and willingness to perform his part of the contract he shall produce documents documents to prove his financial capacity too, to pay the balance amount or that the funds to pay the balance amount was available with them.



23. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in reported in AIR 2020 SC 4865 =[AIROnline 2020 SC 88] =[2020 SCC Online SC 86] in between Sukhwinder Singh Vs. Jagroop Singh the para No.9 reads as under.

Civil Appeal No. 760 of 2020
(Arising out of SLP (Civil) No.10949 of 2019),,
Dated-28-01-2020

9. The suit being the one for specific performance of the contract on payment of the balance sale consideration, the readiness and willingness was required to be proved by the plaintiff and was to be considered by the Courts below as a basic requirement if a decree for specific performance is to be granted.

In the instant case though the defendant No.2 had denied the agreement as also the receipt of the earnest money, the same would not be of consequence as the agreement claimed by the plaintiff is with the defendant No.1 and the contention of the defendant No.2 to deny the same is without personal knowledge on that aspect. However, even in the absence of the defense put forth, the



plaintiff was required to prove his readiness and willingness and that aspect of the matter was to be considered by the Courts below. In the present case though the plaintiff examined himself as PW1, as also PW2 and PW3, the document writer, and the witness to the agreement who stated with regard to the execution of the agreement, the evidence to prove the readiness and willingness with regard to the resources to pay the balance sale consideration is insufficient. In the absence of denial by the defendant No.1, even if the payment of Rs.69,500/- and the claim by the plaintiff of having gone to the office of Sub-Registrar on 15.06.2004 is accepted, the fact as to whether the plaintiff had notified the defendant No.1 about he being ready with the balance sale consideration and calling upon the plaintiff to appear before the Sub-Registrar and execute the Sale Deed was required to be proved. **From among the documents produced and marked as exhibit P-1 to P-9 there is no document to that effect, more particularly to indicate the availability of the balance sale consideration as on 15.06.2004 and as on the date of filing the suit.** Despite the same, merely based on



the oral testimony of PW1, the Courts below have accepted the case put forth by the plaintiff to be ready and willing to complete the transaction.

The ratio (underline emphasized by me) laid down by the Hon'ble Supreme Court of India reported in reported in AIR 2020 SC 4865 =[AIRONLINE 2020 SC 88] =[2020 SCC ONLINE SC 86] in between Sukhwinder Singh Vs. Jagroop Singh in order to prove readiness and willingness the plaintiff is required to produce documents showing he has availability if amount in his bank account . In the present case plaintiff did not produce any documents such as bank statement and bank pass-book to prove his readiness and willingness to perform his part of the contract to pay remaining balance consideration amount. The plaintiff failed to prove his part perform his part of the contract.

24. In the present case admittedly there is no prayer for refund of earnest money . When there being no relief claimed for refund of this money, taking into consideration of the fact that the no person shall be permitted to enrich at the cost of others, in order to do safeguard the interest of the defendant



and also the parties, this court is of the opinion that the court can suo-moto pass an order directing refund of earnest money with interest there on. In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka 1997 SCC ONLINE KAR 130 =[(1997) 4 KLJ 264] =[1998 AIHC 1078] Y.R. Mahadev Vs K. Dayalan the para NO.24 to para No.26 read as under.

Regular First Appeal No. 617 of 1994
Decided on February 24, 1997

24. In my considered view, if the above prayer of the appellant is carefully read along with the Explanation below the proviso of Section 21 (5), it can be said that the least the learned City Civil Judge would have done is to order for awarding compensation by directing refund of the advance amount particularly when the circumstances that the contract had become incapable of performance specifically. **Hence, it appears to me that the learned City Civil Judge would have done well had he exercised that jurisdiction even suo motu on his own, not to make the appellant to suffer and to loose the advance money in the hands of the respondent. It is well**



known principle that none should be allowed to enrich oneself at the cost of another. In the instant case in hand, in fact the appellant had clearly prayed for an alternative relief at prayer (d) praying, the learned City Civil Judge for grant of such other reliefs as the City Civil Judge may deem fit to grant in the circumstances of the case, in the interest of justice and equity. When the learned City Civil Judge was exercising the jurisdiction under the Specific Relief Act, it is obvious that he was more concerned with the discretionary and equitable reliefs to the parties before it and that exercise of jurisdiction would therefore would have been as well be in favour of the appellant too. As a matter of fact in the reported decision cited before me by the learned Counsel for the respondent in Kanshi Ram's case, supra, the Hon'ble Supreme Court had observed in para (5) of the said decision as follows:

“.....It is true that the rise in prices of the property during the



pendency of the suit may not be the sole consideration for refusing to decree the suit for specific performance. But it is equally settled law that granting decree for specific performance of a contract of immovable property is not automatic. It is one of discretion to be exercised on sound principles. When the Court gets into equity jurisdiction, it would be guided by justice, equity, good conscience and fairness to both the parties”.

25. In that view of the matter, **I am of the considered view, that the least the learned City Civil Judge would have done is to compensate the appellant adequately as contemplated in the Explanation below proviso under Section 21(5) of the Specific Relief Act. When that is not done, I feel it is just and proper for this Court to do by directing the respondent to refund the advance of Rs. 20,000/- together with interest from the date of suit to the date of realisation.** Now the question is at what rate of interest. I should not forget here that the respondent had unnecessarily been dragged to Court by the



appellant for no fault of his. This I observe for the reason that the appellant who had refused to encash the cheque for Rs. 21,400/- the respondent very well sent at the earliest point of time and within 10 or 12 days after the suit agreement after rescinding the contract when he came to know that the suit agreement could not be acted upon with the issue of Ex. D-1 notification by government banning registration of Bangalore Development Authority sites during the period of subsistence of lease period. But it is the appellant who did not oblige himself to encash the said cheque and be satisfied with. As such, it is the appellant who tried the path of litigation by making the respondent to bear his side of the cost of litigation unnecessarily. Hence, it would be too harsh a deal if the respondent is directed to return the advance amount at the agreed and contractual rate of interest at 12% p.a. Hence, I direct that the advance amount of Rs. 20,000/- now in the hands of the respondent be returned to the appellant at the reduced rate



of interest at 9% p.a. Hence, I answer point No. 2 in favour of the appellant.

26. In that view of the matter, the impugned judgment and decree passed by the learned City Civil Judge is set aside and modified to the extent that the respondent shall refund to the appellant the advance amount of Rs. 20,000/- together with simple interest at 9% p.a. from the date of agreement i.e., 24-4-1988 to the date of realisation of the sum by him. The same is done by exercising powers to award compensation under explanation below proviso to sub-section (5) of Section 21 of the Specific Relief Act, 1963. As a matter of fact, the learned Counsel for the appellant had submitted that the respondent has got no objection for a direction by this Court to refund the advance amount.

The ratio (underline emphasized by me) laid down by the the Hon'ble High Court of Karnataka 1997 SCC ONLINE KAR 130 =[(1997) 4 KLJ 264] =[1998 AIHC 1078] in between Y.R. Mahadev Vs K. Dayalan is that the



court can grant refund of earnest money suo-moto without relief being claimed in the plaint.

25. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in reported in reported in AIR 2024 SC 4591 in between Usha Devi vs Ram Kumar Singh the para No.12 reads as under.

Civil Appeal No. 8446 of 2024
(Arising out of SLP (C) No.2997 of 2023),,
decided on 05/08/2024

12. Accepting that the plaintiffs-respondents paid an amount of Rs. 80,000/- to the defendant-appellant, and there being no relief claimed for refund of this money, in order to do complete justice between the parties, we feel it appropriate that the said amount of Rs. 80,000/- be returned to the plaintiffs along with 12% simple interest by the appellants within three months from today.



The ratio (underline emphasized by me) laid down by the Hon'ble Supreme Court of India reported in reported in reported in AIR 2024 SC 4591 Usha Devi vs . Ram Kumar Singh is that though there is no relief in the plaint about the alternative relief of refund of amount, the court can order for refund of the advance amount with interest .

26. In view of the law laid down by the Hon 'ble High Court of Karnataka and also Hon'ble Supreme Court of India it is just and proper to pass an order for refund of earnest money with 9% interest per annum there on directing the defendant to pay the same to the plaintiff. In the present case also it is just and proper for this court to pass an order directing the defendant to pay the same.

27. In view of the law laid down by the Hon 'ble High Court of Karnataka and also Hon'ble Supreme Court of India it is just and proper to pass an order for refund of earnest money with 9% interest per annum there on directing the defendant to pay the same to the plaintiff. In the present also it is just and proper for this court to pass an order directing the defendant to pay the same.



28. Hardship of the defendant may be one of the grounds which may be taken into consideration for exercising its discretion by the Court in refusing to grant a decree for specific performance of contract. Section 20 of the Specific Relief Act 1963 embodies a Common law that is grant of a decree for specific performance of a contract is a discretionary one. The Court may, in a given situation, take into consideration subsequent events and also various similar transactions of the plaintiff of entering into the agreement for sale with various persons as referred to above, the conduct of the plaintiff is not free doubt. Hence, the plaintiff is not entitled for the relief of specific performance of contract.

29. The conduct of the plaintiff is not free doubt. Hence, the plaintiff is not entitled for the relief of specific performance of contract. However plaintiff is entitled for the relief of refund of earnest money. It is just and proper for this court to pass an order directing the defendant to pay the same. Hence, issue No.5 answered in Negative.

30. **ISSUE NO.6:-** Foregoing reasons and answering above issues, this court proceeds to pass the following:



ORDER

The suit of the plaintiff is dismissed.

However, the defendant is directed to refund the earnest money of Rs. 19,00,000/- to the plaintiff with 9% per annum interest there on from the date of suit till realization within one month from the date of order.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, computerized by him and corrected and then pronounced by me in open court on 01st day of July 2026)

(Lakshmikanth J Miskin)

Senior Civil Judge & JMFC.,
Sindhanur

ANNEXURE

1. List of witnesses examined on behalf of plaintiff.

PW-1 : M. Narasimha Rao
PW-2 : Chandrashekhar
PW-3 : Ravindranath

2. List of documents marked on behalf of plaintiffs.

Ex.P1 : Original Sale deed
Ex.P2 : Legal notice
Ex.P3 : Postal receipt



Ex.P4 : Postal cover
Ex.P5 & 6 : RTC extracts

3. List of witnesses examined on behalf of defendants:

DW1 : Hanumanthappa

4. List of documents marked on behalf of defendants:

---NIL---

(Lakshmikanth J Miskin)
Senior Civil Judge & JMFC.,
Sindhanur