

KARN210000282019



R.A./3/2019(J)

Presented on : 08-01-2019
Registered on : 08-01-2019
Decided on : 16-04-2026
Duration : 07 years, 03 months,
09 days

**IN THE COURT OF THE ADDL.SENIOR CIVIL JUDGE
& JMFC, CHANNAPATNA**

:PRESENT:

SANDESHA.K., M.A., L.L.B.,
Addl. Senior Civil Judge & JMFC,
Channapatna

Dated, this the 16th day of April 2026

R.A./03/2019

APPELLANT :

Sri. Thimmegowda,
S/o Late Thimmegowda,
Aged about 60 years,
R/at Sulleri Village and Post,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

Represented by Venkatesh
through a general power of
attorney
S/o Thimmegowda,
Aged about 41 years,
R/at Sulleri Village and Post,
Virupakshipura Hobli,

KARN210000282019



2

R.A./3/2019(J)

Channapatna Taluk,
Ramanagara District.

(By Sri. L.A., Adv.)

V/s

RESPONDENT:

Smt.L.Vimala,
W/o Siddappa,
Aged about 31 years,
R/at No.5, 20th Cross,
K.P.Agarahara,
Bhuvaneshwari Nagara,
Magadi Road, Bangalore
Nagara,

Another address,
Sadahalli Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. H.K, Adv.)

IN O.S./35/2013 IN THE SUIT IN BETWEEN:-

Sri.Thimmegowda

.....**Plaintiff**

-Vs-

Smt.L.Vimala

.....**Defendant**

KARN210000282019



3

R.A./3/2019(J)

**DATE OF PRESENTATION
OF THE REGULAR APPEAL** : **08.01.2019**

NATURE OF THE APPEAL : **Against the Judgment
and Decree passed by
the learned Prl.Civil
Judge & JMFC,
Channapatna. in
O.S./35/2013 dated:
07.12.2018.**

JUDGMENT PRONOUNCED ON : **16.04.2026**

**DURATION OF THE
REGULAR APPEAL** : **Year/s Month/s Day/s
-07- -03- -09-**

(SANDESHA.K.)

Addl. Senior Civil Judge & JMFC
Channapatna.

JUDGMENT

The appellant has preferred this appeal under order 41 rule 1 R/w Sec.96 of C.P.C. against the Judgment and Decree passed by the learned Prl.Civil Judge & JMFC, Channapatna, in O.S.No.35/2013 on dated: 07.12.2018.



2. The appellant was the plaintiff, respondent was the defendant before the trial court.

3. For the sake of convenience, herein after the parties are referred to as their ranks shown in the suit before the trial court.

4. The brief facts of the plaintiff case is that:

Plaint schedule property is a agricultural land. Plaintiff schedule property is the self acquired property of the plaintiff. Defendant is intended to sell the suit schedule property for her financial and family necessitate and executed a sale agreement on 28.11.2011 for the total sale consideration amount of Rs.1,20,000/- and on the same day defendant she is received 90,000/- and agreed to the execute the regular sale deed within 3 months but defendant is not execute the same. Thereafter, plaintiff has issued legal notice on 27.3.2012 demanding for executed sale deed but defendant did not turn out. Hence, this suit.



5. On receipt of suit summons issued by the learned trial court, the defendant has entered her appearance through her Advocate and filed written statement. In the written statement defendant denied the the plaint averments and contended that, there is no ready willingness on the part of the plaintiff and plaintiff did not come forward to to get registered the property in his favour. On serval location defendant approached the plaintiff and requested to the get register the property but plaintiff expressed financial crisis. At the time of agreement there is specifically fixed time for 3 months to get registered. Defendant issued reply notice and stated that, plaintiff failed to to get register sale deed the advance amount will be forfeited. Hence, pray for the dismiss the suit.

6. On the basis of pleadings mentioned supra, the learned trial court has framed the following issues:



ISSUES

- 1. Whether the plaintiff proves that, the defendant legally executed the sale agreement dated 28.12.2011 and agreed to sell the suit schedule properties for consideration of Rs.1,20,000/- and received Rs.90,000/- as advance amount?**

- 2. Whether the plaintiff further proves that he was always ready and willing to perform his part of obligation under the contract?**

- 3. Whether the plaintiff further proves that the defendant failed to perform her part of obligation under the contract?**

- 4. Whether the plaintiff is entitled for the Specific Performance relief as sought for?**

- 5. What order and decree?**

7. In order to prove the case of the plaintiff, the GPA holder of the plaintiff examined himself as PW-1 and also examined 1 witness and got marked -09- documents as Ex.P-1 to Ex.P-9.



8. On the other hand, the defendant has been examined herself as DW-1 and no document got marked.

9. By considering the above issues as prime criteria to decide the case, the trial court has heard the arguments of rival parties and posted the matter for judgment. Subsequently, the trial court has dismiss the suit by holding that, plaintiff is not entitled relief of specific performance and he entitled alternative relief.

10. Being aggrieved by the aforesaid Judgment and Decree passed by the learned trial court, the plaintiff has preferred this appeal by contending that, the learned trial court has dismiss the suit by ignoring the admission of the execution of the sale agreement. The trial court failed appreciate properly in the position of law and also documents. the trial court has not consider the document produced by the plaintiff. Defendant is received Rs.90,000



out of Rs.1,20,000/- but trial court has not consider the same. Therefore, the appellant sought to set aside the decree passed by the trial court.

11. Pursuant to the notice issued by this court, the respondent has appeared before the court through his advocate.

12. Subsequently, the record of trial court has secured. I have heard the arguments of erudite counsel for the appellant and respondent.

13. After hearing the arguments and on going through the material available on record, the following points that arise for my consideration:

1. Whether the appellant/plaintiff prove that, the trial court has erred in dismiss in suit?

2. Whether the interference of this Court is called for in the Judgment and Decree of the trial court?



3. What order or decree?

14. My findings to the above points are as under:

Point No.1: In the **Affirmative**
Point No.2: In the **Affirmative**
Point No.3: **As per final order**
For the following:-

REASONS

15. POINT No.1 and 2 :Since all these points are inter-connected to each other, they are taken up together for common discussion in order to avoid repetition of facts and findings.

16. Before embarking upon the facts of the case, it is relevant to ascertain the essential elements which are required in a suit for the specific performance. Whereas, with respect to specific performance, plaintiff has prove that, defendant has executed a agreement of sale with regard to the suit schedule property for the sale consideration and also received advance sale consideration

KARN210000282019



10

R.A./3/2019(J)

and agreed to execute the sale deed and plaintiff is always ready and willing to perform his part of contract.

17. The submission of the appellant counsel is, defendant has agreed to sell the suit schedule property for the valuable consideration amount of Rs.1,20,000/- and also received advance sale consideration amount Rs.90,000/- and executed sale agreement dated 28.12.2011 and agreed to executed sale deed within 3 months. But defendant is filed to executed to the sale deed. Therefore, the plaintiff has issued to the defendant on 27.03.2012, said notice is duly served but defendant neither executed any sale deed nor issued any reply. But the trial court has not properly appreciate document and oral evidence. Defendant is admitted that, she executed sale agreement but trial court failed to appreciate the same and partly decree the suit. Hence, pray for the allow the appeal.



18. The submission of the respondent counsel is plaintiff is not ready and willing to perform his part of contract. On several occasions defendant approached the plaintiff and request the get register the property but plaintiff expressed financial crisis. Plaintiff issued notice after causing delay but defendant gave reply. Hence, pray for dismiss the appeal.

19. As per the contention of the plaintiff that, defendant is agreed to the executed sale deed with regard to the suit schedule property and also executed sale agreement by received advance sale consideration of Rs.90,000/- out of 1,20,000/- but inspite of several request and inspite of issuance of notice defendant failed to executed sale deed. In order to prove said claim, the SPA holder of the plaintiff examined himself has PW-1 and produced as many as 9 documents which marked Ex.P-1 to 9. Ex.P-1 is the SPA, Ex.P-2 RTC extract with regard to the

KARN210000282019



12

R.A./3/2019(J)

suit schedule property. Ex.P3 registered sale agreement, Ex.P4 is the copy of the notice, Ex.P5 is reply notice, Ex.P6 to 8 receipt, Ex.P9 Postal acknowledgment. Upon going through the Ex.P-3 shows that, defendant is agreed to sell the suit schedule property for the total sale consideration of amount Rs.1,20,000/- and also received advance sale consideration of amount of Rs.90,000/-. The contention of the defendant that, the plaintiff is not ready willing to perform his part of contract. Ex.P1 clearly shows that, defendant is received substantial amount. Plaintiff has filed suit with in time hence, the contention of the defendant has no holds water.

20. At this stage it is relevant to note judgment of Hon'ble Supreme Court in 2022 LiveLaw(SC) 375 P.Ramasubamma Vs Vijalalaksmi and others held that,

Specific Relief Act 1963- suit for specific performance for agreement to



sell- ones the execution of the agreement to sell and payment of advance substantial sale consideration is admitted by the vendor, nothing further is required to the prove by the vendee.

21. In the present case on hand defendant is received Rs.90,000/- out of 1,20,000/-. It is admitted by the defendant. At this stage the relevant extract the cross of DW-1. In the cross examination DW-1 is admitted that, ನಿಪಿ.3 ರಲ್ಲಿ ನೀವೇ ದಾಖಲೆಗಳನ್ನು ಮಾಡಿಸಿಕೊಂಡು ಕ್ರಯಪತ್ರವನ್ನು ಮಾಡಿಕೊಡುವುದಾಗಿ ಹೇಳಿದ್ದೆ ಎಂದರೆ ಸರಿ. ಅದರೂ ಕೂಡ ನಾನು ದಾಖಲೆಗಳನ್ನು ತಯಾರು ಮಾಡಿಕೊಂಡಿರಲಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿ ಅವರೇ ದುಡ್ಡು ತೆಗೆದುಕೊಂಡು ದಾಖಲೆಗಳನ್ನು ಮಾಡಿಸಿಕೊಡುತ್ತೇವೆ ಎಂದು ಹೇಳಿದ್ದರು. ಅವಧಿಯಲ್ಲಿ ಕ್ರಯಪತ್ರ ಮಾಡಿಕೊಡದಿದ್ದಕ್ಕೆ ನೋಟೀಸನ್ನು ವಾದಿ ಕೊಟ್ಟಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ದಾವಾ ಸ್ವತ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಸರ್ವೆ ಸ್ಕೆಚ್ ಆಗಲಿ ಇತರೆ ದಾಖಲೆಗಳಲ್ಲಿ ಹಾಜರು ಪಡಿಸಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿ ಇಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. The above admission made by the DW-1 is clear that, plaintiff has filed suit with in time. Therefore, DW-1 is already received

KARN210000282019



14

R.A./3/2019(J)

substantial amount. Hence, plaintiff is noting to prove further. The main contention fo the defendant that, there is no ready and willing perform the contract on the part of the plaintiff, but when the defendant is received substantial amount nothing further is required proved by the plaintiff. Defendant is admitted that, she received substantial amount. Hence, the contention of the defendant is not acceptable.

22. After execution sale agreement plaintiff has issued notice as per Ex.P4 but defendant is not come forward to execute the regular sale deed but defendant has untenable reply and forfeited advance sale consideration amount but said contention incorporated in the Ex.P3 therefore, the contention of the defendant that, to forfeited advanced sale consideration is not tanable.



23. The appellant relied the judgment of Supreme Court in AIR 2006 Supreme Court 3608 Prem Singh V/s Beerbal and others wherein the Hon'ble Apex Court held that,

There is presumption that a register document is valid executed. A register document, therefore, prima-facie would be valid in law. The onus of proof, thus, would be on a person who lead evidence to rebut the presumption.

24. But in instant case on hand the defendant failed to rebut the said presumption by examine any other witnesses. The only contention of the defendant that, there is no ready and willing to perform the contract on the part of the plaintiff. But Ex.P4 produced by the plaintiff itself shows that, plaintiff issued a notice a intime and defendant is received substantial sale consideration amount.



25. Plaintiff has prove that, defendant is sale agreement and agreed to the sale deed with in 3 months by examine 1 witness. PW2 is supported the case of the plaintiff . During the cross examination PW1 is clearly deposed that, defendant is agreed to execute the sale deed with in 3 months. Hence, plaintiff is entitled relief of specific performance.

26. This court has given anxious consideration to the Judgment and decree rendered by the learned trial court. The learned trial court has not carefully perused entire material on record. In the course of arguments, the learned counsel for appellant has contended that, the learned trial court has failed to consider and appreciate the evidence of the plaintiff and also failed to appreciate the document produced by the plaintiff. But on perusal of the judgment of the trial court, it is unequivocally clear that the trial court has not rightly appreciated the entire oral as

KARN210000282019



17

R.A./3/2019(J)

well as documentary evidence. The Judgment and decree rendered by the learned trial court is not in accordance with law. Hence, this court interfere in the judgment and decree rendered by the trial court is necessary. Therefore, for the praefatus reasons, this court is of the view that the appeal filed by the appellant is liable to be allowed. The trial court has not consider oral evidence of DW-1 and Ex.P3 and 4. Accordingly, this court answering the Points No.1 and 2 in the Affirmative.

27. POINT No.3:- In view of my findings on the point No.1 to 3, this court proceed to pass the following:

ORDER

The appeal filed by the appellant under section 41 rule 1 R/w 96 of the C.P.C. is hereby Allowed.



The impugned Judgment and Decree passed by the learned Prl. Civil Judge & JMFC, Channapatna, on dated:07.12.2018 by dismiss the suit filed by the plaintiff in O.S.No.35/2013 is hereby set aside.

The defendant is hereby directed to execute the sale deed in favour of the plaintiff by receiving balance sale consideration within two months from the date of decree.

The plaintiff shall deposit balance sale consideration in the court within a period of 30 days from the date of decree.

If the defendant has failed to execute the sale deed as per the terms of

KARN210000282019



19

R.A./3/2019(J)

**judgment, then the plaintiff is at liberty
to take appropriate action as per law.**

Draw decree accordingly.

**Send back the trial court record
immediately along with the copy of the
Judgment.**

(Dictated to the Stenographer directly on the computer and signed by me and then pronounced in the Open Court on this 16th day of April 2026)

(SANDESHA.K.)

**Addl. Senior Civil Judge & J.M.F.C.
Channapatna.**

KARN210000282019



20

R.A./3/2019(J)

***(JUDGMENT PRONOUNCED IN THE OPEN COURT
(ON /16/04/2026)
(VIDE SEPARATE ORDER)***

ORDER

The appeal filed by the appellant under section 41 rule 1 R/w 96 of the C.P.C. is hereby Allowed.

The impugned Judgment and Decree passed by the learned Prl. Civil Judge & JMFC, Channapatna, on dated:07.12.2018 by dismiss the suit filed



by the plaintiff in O.S.No.35/2013 is hereby set aside.

The defendant is hereby directed to execute the sale deed in favour of the plaintiff by receiving balance sale consideration within two months from the date of decree.

The plaintiff shall deposit balance sale consideration in the court within a period of 30 days from the date of decree.

If the defendant has failed to execute the sale deed as per the terms of judgment, then the plaintiff is at liberty to take appropriate action as per law.

Draw decree accordingly.

Send back the trial court record immediately along with the copy of the Judgment.

**Addl. Senior Civil Judge & J.M.F.C.
Channapatna.**

KARN210000282019

