

**IN THE COURT OF SENIOR CIVIL JUDGE & J. M. F. C.,
CHANNAPATTANA.**

PRESENT : SRI. KIRAN KINI, B.A;LL.B;

**SENIOR CIVIL JUDGE & JMFC,
CHANNAPATTANA,
RAMANAGAR DISTRICT.**

O. S. NO. 197/2012

BETWEEN :

**Chikkalingaiah, S/o Subedar Lingappa, Aged about 66
years, R/a Near Kenchanaguppe Gate, Near Vijaya Bank,
B. M. Road, B. L. C. Complex, Bidadi Hobli, Ramanagara
Taluk and District.....Plaintiff.**

(by Sri. L. A. Advocate)

AND

K. S. Sanjeevaiah, S/o Sanjeevegowda, Aged about 63

**years, House No. 145/1, K. G. Nagar, 1st Main Road,
Chamarajpet, Bangalore-560 019.....Defendant.**

(by Sri. L. M. Advocate)

<i>Date of suit</i>	<i>16.06.2012</i>
<i>Nature of suit</i>	<i>Specific Performance</i>
<i>Judgment on</i>	<i>10.01.2014.</i>
<i>Duration of the suit.</i>	<i>01 Year 06 months 24 days.</i>

Channapattana.

KIRAN KINI

10.01.2014.

Senior Civil Judge & JMFC,

Channapattana.

JUDGMENT

***1. This is a suit filed by the plaintiffs for the relief of
specific performance.***

***2. It is the contention of the plaintiff that the
defendant had executed an agreement for sale for the
sale of the suit schedule property the total sale***

consideration of Rs. 8,50,000/- by receiving a sum of Rs. 8,00,000/-, on 10.06.2011 agreeing to execute the sale deed within one year by receiving the balance sale consideration of Rs. 50,000/- and that the one year has expired on 10.06.2012 despite which the Plaintiff did not execute the Sale Deed and thereupon he issued a notice to the defendant to execute the Sale Deed which was not replied to and the defendant did not execute the Sale Deed and hence the suit.

3. The defendant appeared before the court and filed the written statement denying all the contentions of the Plaintiff and has contended that the Plaintiff and his son in law in collusion with each other have fabricated the said agreement for sale by showing the sale consideration nominally where the actual market value of the suit schedule property is Rs. 40,00,000/- and that the suit is want of cause of action and hence has prayed for dismissal of the suit.

4. On the basis of the pleadings the following issues have been framed.

1. Whether the Plaintiff proves the suit transaction as contended?

2. Whether the defendant proves that the Plaintiff fabricated the suit agreement?

3. Whether the Plaintiff is entitled for the reliefs as claimed?

4. What order or decree?

5. To prove their contentions plaintiff has examined P. W. 1 to P. W. 3 and got marked Ex. P. 1 to P. 15. The defendant has not led any evidence.

6. Heard the arguments of counsel for Plaintiff. The

defendant and the counsel for defendant remained absent and hence the argument on the side of defendant was taken as nil.

7. My findings on the above issues are as follows for the following reasons.

Issue No. 1 : In the affirmative.

Issue No. 2 : In the negative.

Issue No. 3 : In the affirmative.

Issue No. 4 : As per final order.

REASONS

8. Issue Nos. 1 and 2 :

a. These issues are inter connected to each other and hence all these issues are taken up together for discussion.

b. The evidence of P. W. 1 to 3 and Ex. P

1 prima facie prove the execution of the sale agreement by the defendant agreeing to sell the suit schedule property for a sale consideration of Rs. 8,50,000/- by receiving the advance amount of Rs. 8 lakhs agreeing to execute the Sale Deed by receiving balance sale consideration of Rs. 50,000/-.

The defendant has not cross examined P Ws.1 to 3. Further the registration of the Ex. P 1, proves the due execution of the Ex. P 1 by the defendant. The defendant has not adduced any evidence contrary to the evidence of P. W. 1 to 3 and Ex. P 1.

Under the circumstance it can be presumed that the Plaintiff has proved the transaction alleged by him and the defendant has failed to prove that the agreement has been falsely fabricated by the Plaintiff and his son-in-law has contended.

c. Hence I answer the above issues

accordingly.

9. Issue No. 3 :

a. It has already proved the due execution of Ex. P. 1 and receipt of Rs. 8 lakhs by the defendant by agreeing to execute the Sale Deed by receiving balance sale consideration of Rs. 50,000/-.

b. It is the specific contention of the Plaintiff that the defendant has not executed the Sale Deed. It is not the case of the defendant that he has executed the Sale Deed. Since the defendant is bound by Ex. P. 1 his liable to execute the Sale Deed in pursuance of Ex. P. 1.

c. On perusal of the materials on record and also in view of Ex. P. 6 it gets clear that the Plaintiff has been ready and willing to perform his part of contract.

d. If the specific performance of the agreement is ordered, it will not cause injury to the defendant as he has already received Rs. 8,00,000/- from the Plaintiff. Though the defendant has contended that the market value of the suit schedule property is Rs. 40 lakhs, he has not adduced any evidence in relation thereto and hence the contention of the defendant in this regard cannot be accepted. On comparison of the hardships that will be caused to either of the parties on ordering for specific performance, the balance of convenience would tilt in favour of the Plaintiff for an order of specific performance.

e. As such the Plaintiff is entitled for the relief of specific performance as claimed.

f. Hence I answer the above issue

accordingly.

10. Issue No. 4 :

For the reasons discussed herein above, I proceed to pass the following order.

ORDER

1. The suit of the plaintiff is decreed with cost.

2. The defendant is hereby directed to execute the Sale Deed in respect of the suit schedule property by receiving balance sale consideration of Rs. 50,000/- within one month from this date.

3. On failure of the defendant to execute the sale deed as directed herein above, the Plaintiff is entitled to get the sale deed executed through court of law by filing petition for execution.

4. In the event of Plaintiff filing the execution Petition, the petitioner is required to deposit the balance sale consideration of Rs. 50,000/- before filing the petition for execution of the

decree.

**5. Draw decree
accordingly.**

**(The judgment dictated to the
Stenographer directly on the
computer, script revised,
mistakes rectified by me and
then pronounced in open
court on this the 10th day of
January 2014)**

Channapattana.

10.01.2014.

KIRAN KINI

Senior Civil Judge & JMFC,

Channapattana.

ANNEXURE

1. Witnesses examined on behalf of the plaintiff:

P. W. 1 : B. C. Lakshamma.

P. W. 2 : S. Ramesh.

P. W. 3 : Shivanna.

2. Documents marked on behalf of the plaintiff:

Ex. Ps.

1. **R. T. C.**
2. **M. R. Extract.**
3. **Agreement for Sale.**
4. **Form No. 15.**
5. **Office copy of Legal notice.**
6. **Postal Receipt.**
7. **Postal Receipt.**
8. **Postal Receipt.**
9. **Postal Receipt.**
10. **Postal Receipt.**
11. **Legal notice.**
12. **Reply of Post Master.**
13. **Reply Notice.**
14. **Special Power of Attorney.**
15. **Postal Acknowledgement.**

3. List of witnesses examined on behalf of the defendant: Nil.

4. List of Documents marked on behalf of the defendant: Nil.

Channapattana.

10.01.2014.

KIRAN KINI

Senior Civil Judge & JMFC,

Channapattana.