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O.S.No.206/2023(J)

C.R.P.67

Govt. of Karnataka

Form
No.9(Civil)
Title Sheet for
Judgments in
Suits
(R.P.91)

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C., AT MAGADI.**

Present: Sri. Shivakumar R., B.A.L., LL.B.,
Addl. Senior Civil Judge & JMFC, Magadi.

Dated: 9th Day of April 2026
ORIGINAL SUIT NO.206/2023

Plaintiff

:- Sri. Ramanna,
S/o. Late. Appajappa,
Aged about 58 years,
R/at: 875, Kumbarara Beedi,
Maddur Road, Kunigal Town,
Tumkur District.

{ Sri. Y.R.H. Advocate }

V/s

Defendant

:- Sri. Fairoz Pasha,
S/o. Abdul Khaleel,
Aged about 45 years,
R/at: Ward No.16, Old
Masjeed Mohalla, Magadi Town,
Ramanagara District.

{ By Sri. G.H.M. Advocate }



Date of institution of Suit	01.04.2023		
Nature of the suit	Specific Performance of contract		
Date of commencement of recording of evidence	12.06.2025		
Date on which Judgment was Pronounced	09.04.2026		
Total duration	Year/s	Month/s	Day/s
	03	00	08

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J U D G M E N T

The plaintiff has filed this suit against the defendant for the relief of specific performance of contract dated: 24.03.2022 in respect of the suit schedule property.

2. It is the case of the plaintiff that :

(a) The defendant is the owner of the suit schedule property. The defendant had approached the plaintiff and intended to sell his property and offer to sell the suit schedule property for sale consideration of Rs.5,50,000/-. The plaintiff accepted the offer and ready to purchase the same. The



defendant executed registered agreement of sale dated: 24.03.2022 by receiving the advance amount of Rs.5 lakhs from the plaintiff by way of cheque bearing No.001326 drawn on Bank of Baroda, Gavimatta Branch, Kunigal Taluk before the witnesses and agreed to receive the balance sale consideration of Rs.50,000/- at the time of registration of the regular sale deed. The defendant has agreed to execute the registered sale deed within the period of three months by getting 11 'E' Sketch and other necessary documents.

(b) It is further stated that, the plaintiff is always ready and willing to perform his part of the contract. The plaintiff has approached the defendant to execute the absolute sale deed by receiving balance sale consideration amount. But the defendant has postponed the same by one or the other reasons best known to him. Thereafter, the plaintiff got issued legal notice to the defendant through his counsel on 27.02.2023 calling upon the defendant to execute the sale



deed by receiving balance sale consideration amount. The said notice was duly served to the defendant. In spite of service of notice, the defendant has not comply the same nor reply the same.

(c) It is further stated that, the defendant is making hectic attempts to alienate the plaint schedule properties to the third party with a deliberate intention to defeat the rights of the plaintiff accrued over the suit schedule property. Hence, this suit.

3. After service of suit summons, the defendant has appeared through his counsel and filed the written statement and resisted the suit of the plaintiff. In his written statement, the defendant has admitted that, he is the owner of the suit schedule property and denied the rest of the plaint averments and interalia contended that, there has been a money transaction between the Plaintiff and the Defendant for the past ten years and they are well acquainted with each other.



The defendant borrowed a sum of Rs.5,00,000/- from the plaintiff and the Defendant has been paying interest at the rate of 5% without any default. The Plaintiff instructed the Defendant to pay the interest amount to one Deepu, and the Defendant has been doing so by way of Phone Pay as well as cash. The Defendant issued two cheques belonging to the Defendant's wife drawn on Bank of Baroda and also executed a registered sale agreement in favor of the Plaintiff solely as security. The Plaintiff promised to cancel the registered sale agreement and returned the cheques issued. Two months before the Plaintiff caused the notice, the Defendant requested the Plaintiff to cancel the registered sale agreement and returned the cheques by receiving the amount due. The Defendant issued a reply notice requesting the Plaintiff to cancel the sale agreement and return the cheques upon receipt of payment. Despite being fully aware of these facts, the Plaintiff, with an evil intention to deprive the Defendant of



the schedule property, caused the notice and filed this false suit, which is not maintainable. For all these grounds, the defendant prayed to dismiss the suit of the plaintiff.

4. On the basis of pleadings and materials on record, my learned predecessor has framed the following issues:

- 1) Whether the plaintiff proves that, the defendant has executed registered agreement of sale dated: 24.03.2022 by receiving advance amount of Rs.5,00,000/- out of sale consideration amount from him?
- 2) Whether the plaintiff proves that, he is ready and willing to perform his part of contract?
- 3) Whether the defendant proves that, he has executed agreement for sale dated: 24.03.2022 as a security for the loan transaction as pleaded by the defendant at para No.9 of his written statement?
- 4) Whether the plaintiff is entitled for the relief sought for in this suit?
- 5) What order or decree?



5. In order to prove the case of the plaintiff, the plaintiff himself examined as PW.1 and got marked 9 documents as Ex.P.1 to P9 and closed his side of evidence.

6. In order to falsify the case of the plaintiff, the defendant himself is examined as DW-1 and he has not produced any documentary evidence.

7. Heard the arguments of plaintiff's side. In spite of providing sufficient opportunities, the counsel for the defendant has not addressed the arguments on merits. However, liberty is given to the defendant counsel to submit written submissions before the Office on or before 08.04.2026, but the counsel for the defendant failed to do so.

8. My findings on the above issues are as follows:

Issue No.1 : In the Affirmative,

Issue No.2 : In the Affirmative,

Issue No.3 : In the Negative,

Issue No.4 : In the Affirmative,



Issue No.5 : As per the final order,
for the following:

REASONS

9. **ISSUE NO.1 & 3:-** Both these issues are inter related with each other. Hence, in order to avoid repetition of facts and findings, these issues are taken up together for common discussion. I have already narrated in brief what is the case of the plaintiff is and what is the defense of the defendants is. The burden of proving the issue No.1 is casted upon the plaintiff and burden of proving the issue No.3 is casted upon the defendant.

10. In order to prove the case of the plaintiff, the plaintiff himself has filed examination-in-chief by way of affidavit and examined as PW-1. The PW-1 in his chief-examination he has reiterated the plaint pleadings.

11. In order to substantiate the case of the plaintiff, the plaintiff has produced as many as 9 documents, which are



came to be marked as Ex.P1 to P9. Ex.P.1 is the Registered Agreement of Sale dated: 24.03.2022, Ex.P2 & 3 are the is the RTC Extract, Ex.P4 is the copy of the Legal Notice dated: 27.02.2023, Ex.P5 is the Postal Acknowledgment, Ex.P6 is the copy of the Reply Notice dated: 07.03.2023, Ex.P7 is the Bank Statement and Ex.P8 & 9 are the RTC Extracts.

12. In order to disprove the case of the plaintiff, the defendant has filed the examination-in-chief by way of affidavit and examined as DW-1. The DW-1 in chief-examination he has reiterated the written statement averments. The defendant in order to substantiate his defense, he has not produced any documentary evidence.

13. The learned counsel for the the plaintiff vehemently argued that, the defendant is the absolute owner of the suit schedule property, he has executed the registered agreement of sale dated: 24.03.2022 in favour of plaintiff in respect of suit schedule property by receiving the advance amount of



Rs.5 lakhs by way of cheque and agreed to execute the absolute sale deed by receiving the balance sale consideration of Rs.50,000/-. The time is fixed for the performance of the contract for a period of three months from the date of agreement and also defendant agreed to produce the necessary documents for registration. It is further argued that, the plaintiff is always ready and willing to perform his part of contract, but the defendant has not executed the absolute sale deed in terms of the agreement of sale as stated supra. It is further argued that, the defendant in his written statement he has taken the contention that, he has executed Ex.P1 in favour of plaintiff for the security purpose of loan transaction. In order to substantiate the same, the defendant has not produced any iota of documents not he has examined any witnesses. In the absence of the same, its hold no water in the eye of Law and further argued that, there is no recital



with regard to the loan transaction as alleged by the defendant in Ex.P1.

14. The learned counsel for the plaintiff has relied upon the following decisions;

- (I) 2025(1) Indian Civil Cases 96 (Karn.)
- (ii) 2022 (3) Indian Civil Cases 294 (S.C.)
- (iii) 2023 (3) Indian Civil Cases 1 (S.C.).

15. On meticulous reading of the oral and documentary evidence adduced by the both parties and other materials available on record, the plaintiff has filed this suit against the defendant for the relief of specific performance of contract dated: 24.03.2022 in respect of suit schedule property. According to plaintiff, the defendant has executed the registered agreement of sale dated: 24.03.2022 in favour of plaintiff in respect of suit schedule property. The sale consideration was fixed for a sum of Rs.5,50,000/-, out of



sale consideration the defendant has received an advance amount of Rs.5 lakhs and agreed to execute the absolute sale deed in favour plaintiff in terms of the sale agreement, but as per the terms and conditions of the sale agreement the defendant has not executed the absolute sale deed in favour of plaintiff in respect of the suit schedule property.

16. On the other hand, the defendant has contended that, he is the owner of the suit schedule property and denied the rest of the plaint averments and interalia contended that, there has been a money transaction between the Plaintiff and the Defendant for the past ten years and they are well acquainted with each other. The defendant borrowed a sum of Rs.5,00,000/- from the plaintiff and the Defendant has been paying interest at the rate of 5% without any default. The Plaintiff instructed the Defendant to pay the interest amount to one Deepu, and the Defendant has been doing so by way of Phone Pay as well as cash. The Defendant issued two cheques



belonging to the Defendant's wife drawn on Bank of Baroda and also executed a registered sale agreement in favor of the Plaintiff solely as security. The Plaintiff promised to cancel the registered sale agreement and returned the cheques issued. Two months before the Plaintiff caused the notice, the Defendant requested the Plaintiff to cancel the registered sale agreement and returned the cheques by receiving the amount due. The Defendant issued a reply notice requesting the Plaintiff to cancel the sale agreement and return the cheques upon receipt of payment. Despite being fully aware of these facts, the Plaintiff, with an evil intention to deprive the Defendant of the schedule property, caused the notice and filed this false suit, which is not maintainable.

17. The plaintiff in order to prove the execution of sale agreement, the plaintiff has examined himself as PW.1 and got marked the original copy of the registered agreement of sale dated: 24.03.2022 as per Ex.P.1.



18. On the other hand, the defendant has examined as DW.1. The DW.1 in his chief examination he has reiterated the written statement averments.

19. It is pertinent to note that, at the out set, from the very written statement filed by the defendant, it very clear that the defendant has not disputed his signature found on Ex.P.1-agreement of sale. It is very pertinent to note that, the Ex.P.1 is the registered agreement of sale. It has got initiate presumptive value under the provision of the Registration Act and Evidence Act. At this juncture, I would like to refer the decision rendered by the Hon'ble Apex Court of India in the case of **Prem Singh and others Vs. Birbal and others**, the same is reported in **AIR 2006 SC 3608**, wherein Their Lordship held that:

Presumption that a register document is a validly executed. A register document, therefore prima facie would be valid. The onus of proof, thus, would be on



a person who leads evidence to rebut the presumption.

On perusal of the ratio laid down in the aforesaid decision is aptly applicable to the present case on hand. In the instant suit also, the defendant has admitted his signature found on Ex.P.1 and disputed the validity of the sale agreement. On these facts and circumstances, the burden lies upon the defendant to prove that, the said document was executed in favour of the plaintiff for the purpose of security of loan transaction between the plaintiff and defendant. But, it is pertinent to note that, the defendant except self-swearing oral statement of DW.1, he has not produced any iota of documents to show that, the Ex.P.1 is not a sale agreement and it is security document for the alleged loan borrowed by him from the plaintiff. It is relevant to note that, DW-1 has not tendered for the cross-examination in the above matter. Under these



circumstances, the adverse inference can be drawn against the defendant as per Section 114 of Indian Evidence Act.

20. It is presumed that, a prudent man cannot sign the document without seeing or reading the contents of the document. In the cross examination also there is absolutely no contrary admission obtained from the mouth of PW.1. As such, there is absolutely no material to show that the document executed by the defendant is a security document and it is not an out and out sale agreement. It is well settled law that, mere self swearing stating itself is not sufficient to prove the plea set up by the defendant, but, it has to be proved by adducing cogent and credible evidence, in the absence of the same, it holds no water in the eye of law.

21. Basically, it is very pertinent note that, the defendant cannot take a contention that, it is security document, when the instrument executed by the defendant discloses recitals contrary. Because, such contention is hit by



provisions of the Sec.91 of the Evidence Act. At this juncture, I would like to refer the decision reported in **AIR 2013 (NOC) 82 (MAD)**. In the case of **Shankar Vs. Manogari**, in the said judgment Their Lordship has pleased to held that,

When the terms and conditions of the agreement reduced to document in writing cannot be sought to prove by any other evidence then document itself.

22. Even in the decision reported in **2015(3) KCCR SN 250 (SC)** in the case of **Nanjappa Vs. Ramaswamy and another**, it is held that,

No evidence of any oral agreement or statement be admitted as between the parties to any such instrument for purpose contradicting varying adding or subtracting from the terms.

23. In the recent decision rendered by the Hon'ble Supreme Court of India in the case of **Madhukar Nibrutti**



Jagtap and others Vs. Smt. Pramilabai Chandulal Parandekar, the same is reported in **AIR 2019 SC 4252**, wherein the Hon'ble Apex Court pleased to held that,

There was no whisper about the loan transaction or any security for such transaction on the document was clearly executed as being the supplementary agreement for sale.

On perusal of the dictum laid down in the aforesaid decision, the same is aptly applicable to the present case on hand. It is very pertinent to note that, in the present case also absolutely there is no whisper in the agreement that, the present transaction is a money transaction or the document executed by the defendant in favour of plaintiff for a security of loan transaction. It is very clear that, the very contention of the defendant that, the document executed by him is a security for the loan availed by the defendant is not tenable and sustainable in the eye of law. It addition to that, there are



absolutely no materials on record to substantiate the said contention also. At least, there is no contemporary contrary document to show that, Ex.P.1 is the security document for loan.

24. The learned counsel for the defendant has lengthily cross examined the PW.1, but, he did not elicited from the mouth of PW.1 to substantiate the contention of the defendant. On careful perusal of the oral and documentary evidence adduced by both the parties, this Court come to conclusion that, the plaintiff has successfully proved that, the defendant has entered into a registered agreement of sale dated: 24.03.2022 in respect of suit schedule property and agreed to sell the suit schedule property for valuable sale consideration of Rs.5,50,000/- and the defendant has received an advance amount of Rs.5,00,000/- from the plaintiff in the presence of witnesses as pleaded in the plaint. The defendant has failed to prove that, he has executed the



registered agreement of sale dated: 24.03.2022 as a security for loan transaction held between the plaintiff and defendant as pleaded in the written statement. For considering all these reasons, I answer the Issue No.1 in the Affirmative and Issue No.3 in the Negative.

25. **ISSUE NO.2:-** The plaintiff in his pleadings he has specifically pleaded that he is always ready and willing to perform his part of contract. In the instant suit, in the plaintiff pleadings the plaintiff has specifically pleaded that, he has orally demanded the defendant to execute the absolute sale deed as per the terms and conditions of sale agreement by receiving the balance sale consideration amount. But, the defendant has postponed the same on one or other reasons. Finally, the plaintiff got issued legal notice dated: 27.02.2023 to the defendant as per Ex.P4, calling upon the defendant to execute the registered sale deed by receiving balance sale consideration of Rs.50,000/- within 15 days from the date of



receipt of notice. In spite of service of notice, the defendant has not complied the same, but he has given a reply notice on 07.03.2023, which is marked as Ex.P6.

26. Now let me examine whether the plaintiff has shown his readiness and willingness to perform his part of contract. At this juncture, the dictum rendered by **the Hon'ble Supreme Court** in the case of **Kalawati Vs. Rakesh Kumar and others** reported in **(2018) 3 SCC 658** is guiding torch. I have read the aforesaid decision carefully. The distinction between readiness and willingness has been stated at Para 18 of the said judgment which runs as under :

In Acharya Swamy Ganesh Dassji Vs. Sita Ram, the same is reported in (1996) 4 SCC 526 this court draw a distinction between readiness to perform the contract and willingness to perform the contract. It was observed that, by readiness it may be meant the capacity of the plaintiff to perform the contract which would include the financial



position to pay the purchase price. As far as the conduct of the plaintiff has to be properly scrutinized along with attendant circumstances. On the facts available, the Court may infer whether or not the plaintiff was always ready and willing to perform his part of the contract.

On perusal of dictum laid down by the Hon'ble Apex Court in the aforesaid decision gives me an understand that not only readiness, but also willingness assumes importance. The readiness refers the financial position to pay the purchase price, whereas willingness refers to conduct and ignorance and due diligence shown to get the sale deed registered. As per readiness is concerned, substantial portion of the consideration amount of Rs.5,00,000/- out of sale consideration amount of Rs.5,50,000/- was paid by the plaintiff at the time of execution of said sale agreement dated: 24.03.2022 which is marked as Ex.P.1. In this case an amount of Rs.50,000/- is left. Thus the financial capacity of



the plaintiff to perform his part of contract cannot put in doubt. Ex.P7 is the Bank Statement pertaining to the account maintain by the plaintiff in his bank account, it disclose that, there is sufficient funds in his account to perform his part of the contract. Ex.P.4 is the legal notice dated: 27.02.2023, on perusal of the same, it discloses that the plaintiff has issued legal notice to the defendant calling upon the defendant to execute the absolute sale deed in favour of the plaintiff by receiving balance sale consideration amount of Rs.50,000/- which shows that the plaintiff is always ready and willing to perform his part of contract. For considering all these reasons, I answer Issue No.2 in the Affirmative.

27. **ISSUE NO.4:** Now coming to the aspect of entitlement of the discretionary relief. This Court do not find any materials or any such infringement aspect which go against the case of the plaintiffs as already discussed the



plaintiff has proved Ex.P1. That means the necessary ingredients that are very much required for the suit for specific performance has been fulfilled to the satisfaction of the Court by the plaintiff. Further more, when this Court has already held that, the plaintiff has proved readiness and willingness on his part, this Court has to accept the version of the plaintiff as it has not been controverted by the defendant. Hence, the plaintiff is entitled for the relief of specific performance as sought in the plaint. Hence, this Court answer the Issue No.4 in the Affirmative.

28. **Issue No.5:** For the foregoing reasons, discussions and findings to the above points, this court proceed to pass the following:

ORDER

The suit of the plaintiff is decreed with cost.

The defendant is hereby directed to execute the registered sale deed in favour of the plaintiff in respect of suit schedule property within 60 days from the date of this Judgment, which otherwise the plaintiff is at liberty to get



the sale deed executed through the Court with due process of Law.

The plaintiff shall deposit the balance sale consideration of Rs.50,000/- within 30 days from the date of this Judgment.

Draw decree accordingly.

(Dictated to the Typist directly on the computer, computerized by her, corrected by me and then pronounced in the open Court on this the **9th day of April, 2026.**)

**(SHIVAKUMAR R.)
ADDL. SR. CIVIL JUDGE
AND J.M.F.C,
MAGADI.**

A N N E X U R E

List of witness examined for the plaintiff:-

PW.1 : Sri. Ramanna

List of documents exhibited for the plaintiff:-

Ex.P1 : Sale Agreement dtd: 24.03.2022
Ex.P1(a) : Signature of defendant
Ex.P2 & 3 : RTC Extracts
Ex.P4 : Legal Notice dtd: 27.02.2023
Ex.P5 : Postal Acknowledgment
Ex.P6 : Reply Notice dtd: 07.03.2023
Ex.P7 : Bank Statement
Ex.P8 & 9 : RTC Extracts

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List of witnesses examined for the defendant:-

DW-1 : Sri. Fairoz Pasha

List of documents exhibited for the defendant:-

- NIL -

(SHIVAKUMAR R.)
ADDL. SR. CIVIL JUDGE AND J.M.F.C,
MAGADI.