

IN THE COURT OF THE PRL.SENIOR CIVIL JUDGE &JMFC,

AT SAGAR.

DATED THIS THE 30th day of January 2021.

Present: SMT.REHANA SULTANA., *B.A.L.,L.L.B.*,
Prl.Senior Civil Judge & JMFC,
Sagar.

OS No.20/2019.

PLANITIFF :

Dinesh M s/o Manjaiah,
a/a 32 years,
Resident of Karumane,
Linganamakki post,
Sagar taluk.

(By pleader **Sri.K.T.Nyamaiah**)

- Versus -

DEFENDANTS :

Gayathri s/o late Gururaj,
a/a 52 years,
Resident of 2nd cross,
Lohiya nagara,
Jog road,
Sagar city,
Now resident of
House No.75A,
6th Main,
Channaveerakanavi road,
Pramod Layout,
Bangalore-560043.

(Defendant placed exparte)

Date and Nature of the suit	Specific performance of contract.		
Date of Institution of the Appeal	22.04.2019.		
Date on which Judgment was pronounced	30.01.2021.		
Duration of the Appeal	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
	01	09	08

(Rehana Sultana)
Prl.Senior Civil Judge & JMFC,
Sagar.

J U D G M E N T

Suit is for specific performance of the contract against defendant to execute registered sale deed.

2. Description of the properties: 1) Site No.86, Khatha No.857-857 measuring 25 feet x 35 feet, situated at Ward No.11/13, Sagar City Municipal Corporation, Mankalale extension, Lohiya Nagara, Sagar city, bounded by East: Site No.87, West: City Municipality road, North: Site No.85, South: Vacant site related to City Municipal Corporation.

3. Site No.87, Khatha No.1271-1271 measuring 7.5 meter x 9.0 meter, situated at Ward No.11/13, Sagar City Municipal Corporation, Mankalale extension, Lohiya Nagara, Sagar city, bounded by East: City Municipality road, West: Site No.86, North: Site No.88, South: Property of City Municipal Corporation.

4. ***Sum and substance of this case is as follows:-***

Plaintiff asserted that, defendant is the owner in possession of the property. She agreed to sell the suit property for a total consideration amount of Rs.15,05,000-00 to the plaintiff and executed an Agreement of sale on 6.4.2016. He paid Rs.5000-00 cash and Rs.45,000-00 in cheque pertaining to account of his wife. In total he has paid Rs.50,000-00 to the defendant as advance consideration amount at the time of agreement and defendant agreed to execute the registered sale deed within 2 months.

5. Later on 14.7.2016 he paid amount through cheque of his wife's account on 14.7.2016 cheque bearing No.36413 of

Rs.50,000-00, on 21.7.2016 cheque bearing No.36403 of Rs.50,000-00, on 16.8.2016 of Rs.1,00,000-00 and on 7.10.2016 of Rs.50,000-00, he has paid sum money to the defendant from the account of his friend Jagadeesh dated 22.8.2016 of Rs.2,00,000-00 and on 14.10.2016 of Rs.1,50,000-00 and again he paid from his account on 26.6.2017 of Rs.6,00,000-00. By virtue of these cheques and accounts the defendant has received total amount of Rs.12,50,000-00 from the plaintiff. Even after receipt of the said amount the defendant extending time to execute the registered sale deed.

6. He is always ready and willing to pay the remaining consideration amount of Rs.2,55,000-00 and get registered the sale deed. The defendant is bound to execute the registered sale deed, still she is avoiding to execute the sale deed. He has performed his part of obligation and ready to perform remaining part of obligation by paying balance consideration amount and get registered the sale deed. He is always ready

and willing to perform his part of contract. He requested the defendant to perform his part of contract, but the defendant without any reasons avoiding to execute the sale deed. The defendant is intending to perform her part of contract. She is bound to execute the registered sale deed by receiving balance consideration amount.

7. On 11.3.2019 he issued Legal notice to the defendant through his counsel to execute the registered sale deed by receiving the balance consideration amount. He demanded the defendant to hand over the original documents before 2 days of the registration and he demanded the defendant to execute the registered sale deed on 25.3.2019 in the office of Sub-Registrar, Sagar by receiving balance consideration amount. The Legal notice issued to the defendant to his present address, but in spite of same, the defendant intentionally evaded to receive the Legal notice and said Legal notice with cover was returned to the plaintiff's counsel. That on 25.3.2019, plaintiff has waited in the office of Sub-Registrar,

Sagar for the purpose of execution of sale deed, but defendant has failed to appear on that day before Sub-Registrar, Sagar. The plaintiff is still ready and willing to perform his part of contract. The cause of action for the suit arose on 6.4.2016 when the defendant has executed the Agreement of sale and subsequently, when the plaintiff has issued legal notice through his counsel to the defendant and receive the balance consideration amount and to execute the registered sale deed on 25.3.2019 before Sub-Registrar office, Sagar. Hence this suit.

8. After service of the suit summons, the defendant failed to appear and contest the matter. Accordingly she was placed *exparte*.

9. Plaintiff in order to prove the plaint averments examined himself as P.W1 and got marked the documents as Exs.P.1 to 12 and he has examined one more witness on his behalf as P.W-2.

10. Heard arguments on the plaintiff side.

11. The points that arise for court consideration are as under:

POINTS

1. Whether plaintiff proves that defendant has executed registered agreement of sale dated 6.4.2016 by receiving part sale consideration amount of Rs.12,50,000-00 and agreed to execute registered sale deed by receiving balance sale consideration amount ?
2. Whether plaintiff proves that he is always ready and willing to perform his part of contract?
3. Whether the plaintiff entitled for the relief of Specific Performance of Contract?
4. What order?

12. My answer to the above points are as under:

Point No. 1 In the affirmative,

Point No. 2 In the Affirmative,

Point No. 3 In the Affirmative,

Point No. 4 As per final order,

for the following:-

:REASONS:

13. **Point No.1 to 3:** All these points are inter-related to each other, hence in order to avoid repetition of facts and materials on record, these points are discussed together.

14. Plaintiff asserted that, defendant is the owner in possession of the properties. She agreed to sell the suit property for a total consideration amount of Rs.15,05,000-00 to the plaintiff and executed an Agreement of sale on 6.4.2016. He paid Rs.5000-00 cash and Rs.45,000-00 in cheque pertaining to account of his wife. In total he has paid Rs.50,000-00 to the defendant as advance consideration amount at the time of agreement and defendant agreed to execute the registered sale deed within 2 months.

15. Later on 14.7.2016 he paid amount through cheque of his wife's account on 14.7.2016 cheque bearing No.36413 of Rs.50,000-00, on 21.7.2016 cheque bearing No.36403 of Rs.50,000-00, on 16.8.2016 of Rs.1,00,000-00 and on

7.10.2016 of Rs.50,000-00, he has paid sum money to the defendant from the account of his friend Jagadeesh dated 22.8.2016 of Rs.2,00,000-00 and on 14.10.2016 of Rs.1,50,000-00 and again he paid from his account on 26.6.2017 of Rs.6,00,000-00. By virtue of these cheques and accounts the defendant has received total amount of Rs.12,50,000-00 from the plaintiff. Even after receipt of the said amount the defendant extending time to execute the registered sale deed.

16. He is always ready and willing to pay the remaining consideration amount of Rs.2,55,000-00 and get registered the sale deed. The defendant is bound to execute the registered sale deed, still she is avoiding to execute the sale deed. He has performed his part of obligation and ready to perform remaining part of obligation by paying balance consideration amount and get registered the sale deed. He is always ready and willing to perform his part of contract. He requested the defendant to perform his part of contract, but the defendant

without any reasons avoiding to execute the sale deed. The defendant is intending to perform her part of contract. She is bound to execute the registered sale deed by receiving balance consideration amount.

17. To substitute his case plaintiff has to first prove due execution of agreement of sale dated 6.4.2016. In order to prove the agreement plaintiff examined himself as PW-1 and produced 12 documents, which are marked at Ex.P1 to Ex.P12. Ex.P1 is the Self-Assessed property tax extract of defendant for the year 2016-17. Ex.P.2 and Ex.P3 are the true copies of Property Tax Registers with respect to suit Item No.1 and 2 properties. Ex.P4 to Ex.P7 are the Encumbrance certificates with respect to suit Item Nos.1 and 2. Ex.P8 is the 2 Stamp duty paid challans. Ex.P9 is the Legal notice dated 11.3.2019 issued by the counsel for the plaintiff calling upon the defendant to execute the registered sale deed dated 25.3.2019 by receiving balance consideration amount. Ex.P10 and Ex.P11 are the returned Postal cover with un-executed

Legal notice dated 11.3.2019. Ex.P12 is Agreement of sale dated 6.4.2016 executed by defendant in favour of plaintiff and agreed to execute the registered sale deed within two months after receiving balance consideration amount. Ex.P13 and Ex.P14 are the Two Axis Bank Account extract of plaintiff's wife. Ex.P15 is the Axis Bank Account statement of friend of plaintiff by name Jagadeesh. Ex.P16 and Ex.P17 are the Bank Account Statements of plaintiff.

18. PW2 is one of the witnesses to the Agreement of sale and he has filed his affidavit-in-lieu-of-examination-in-chief and he has reiterated the contents of the plaint of the plaintiff and he has deposed that he is also one of the witnesses to the Agreement of sale along with one Rekha Krishnamurthy.

19. Above scrutiny of the documents show that defendant executed registered agreement of sale without delivery possession by receiving earnest money of Rs.12,50,000-00 and promise to execute registered sale deed after getting documents. Ordinarily it is sufficient that, there

is an agreement between plaintiff and defendant. So, burden is on the vendor i.e., defendant to show possibly that he has not executed any agreement of sale by receiving the advance amount but defendant failed to contest the suit by producing by oral and documentary evidence before this court. Further there is no material to rebut the evidence of plaintiff that he has not paid advance sale consideration amount.

20. As per Sec.20 of specific performance of contract court may refuse to grant a relief of specific performance of contract. If, contract gives the plaintiff unfair advantage over the defendant or where the performance of contract would involve hardship on the defendant, which he did not foresee or where the circumstances, under which the contract was entered makes it inequitable to enforce specific performance of contract.

21. None contest of the suit case room to draw adverse interference against her. Defendant was not appeared before the court in-spite of service of summons to contest the case.

In such circumstance adverse inference can be drawn against the defendant.

22. Hence, at this stage plaintiff has discharged his initial burden by way of oral and documentary evidence. In absence of contrary absolutely no impediment to believe his version. The factual matrix put-fourth by him remains intact. In order to prove ready and willingness plaintiff has stated in his affidavit evidence and in plaint that is always ready and willing to perform his part of contract. No contra evidence is led to rebut presumption raised in favour of plaintiff.

23. Now the moot question is to be adjudicated is whether the plaintiff is entitled to discretionary relief of Specific Performance of Contract. The settled principle of law is that, the grant of decree for specific performance of contract is the discretionary the relief court is to consider whether it is fair, just and equitable to grant specific performance of contract? while discussing supra court is already opinion that plaintiff has proved the due execution of agreement of sale.

24. In the present suit plaintiff will not get unfair advantage if the decree for specific performance of contract is granted in his favour because plaintiff has paid maximum amount of sale consideration in part-performance of contract in advance and he opted for the performance of contract within a reasonable time. Sale agreement depicts that there is no duty cost upon the plaintiff, to perform his part of contract and part performance rest on the defendant but she failed to perform it, in-spite of several demands. As such non-performance of contract will cause hardship on the plaintiff, whereas no hardship will be caused to defendant. Further defendant has not put-fourth any circumstance to refuse the decree for specific performance of contract.

25. Non contested of the suit by the defendant leads to draw adverse inference against defendant, there is no hurdle to accept the unchallenged testimony of PW-1. In the absence of contrary he is entitled to suit claim. Therefore, I incline to answer the point No. 1 to 3 in Affirmative.

26. **Point No. 4**: In view of my answer to the point No. 1 to 3 and discussion as stated above, I proceed to pass the following:-

ORDER

Suit is decreed with cost.

The defendant is hereby directed to execute the registered sale deed in favour of plaintiff in respect of suit schedule properties by receiving balance consideration amount, within two months from the date of Judgment, in failure of which the plaintiff is at liberty to take legal steps against the defendant.

(Dictated to the stenographer, transcribed by him, corrected and then pronounced by me in the open court on this 30th day of January 2021.)

(REHANA SULTANA)
Prl.Senior Civil Judge & J.M.F.C.,
Sagar.

ANNEXURE

WITNESSES EXAMINED FOR PLAINTIFF:

PW- 1 : Dinesh M.
P.W.2 : M.N.Thimmaiah alias Raju.

DOCUMENTS MARKED FOR THE PLAINTIFF:

- Ex.P1 : Self-assessment Property Tax Register copy.
- Ex.P2 & P3 : True copy of Property Tax Register extracts.
- Ex.P4 to P7: Encumbrance certificates.
- Ex.P8 : Stamp duty paid challans (2).
- Ex.P9 : Legal Notice dated 11.3.2019 copy.
- Ex.P10 : Returned unserved Postal Acknowledgment.
- Ex.P11 : Copy of Legal notice in returned Postal Acknowledgment.
- Ex.P12 : Agreement of sale dated 6.4.2016.
- Ex.P13 & P14 : Bank Account statement of wife of plaintiff in Axis Bank.
- Ex.P15 : Account statement of friend of plaintiff in In Axis bank.
- Ex.P16 & P17 : Bank Account statements of plaintiff.

WITNESSES EXAMINED FOR DEFENDANT:

-NIL-

DOCUMENTS MARKED FOR DEFENDANT :

-NIL-

Prl.Senior Civil Judge & J.M.F.C.,
Sagar.