

TITLE SHEET FOR JUDGMENT
IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC., AT SIRA

O.S.NO. 5/2013

Dated this the 29th day of November 2016

PRESENT: Sri. Vijaykumar S. Jatla,
B.Sc. LL.B.,
Prl. Civil Judge & JMFC., Sira.

PLAINTIFF: Manjunath L.
S/o. S.G.Lakshminarasimhaiah,
aged 32 years, R/o. Santhepete,
Sira town.

(By Sri. GR., Advocate)

/Vs/

DEFENDANTS: 1. Parameshappa S/o. late Papanna,
aged 47 years,
2. Smt. Shashikala W/o.Parameshappa,
aged 27 years,
3. Siddappa S/o. late Papanna,
aged 42 years,
4. Sannathayamma W/o.Siddappa,
aged 30 years,
5. Nagappa S/o. late Papanna,
aged 32 years,
6. Sharadamma W/o. late Papanna,
aged 62 years.

All are R/o. Neralagudda village,
Bukkapatna hobli, Sira taluk.

(Exparte)

Date of Institution of Suit :

3-1-2013

Nature of suit	:	Specific performance of contract		
Date of commencement of recording of evidence	:	18-10-2016		
Date on which Judgment was pronounced	:	29-11-2016		
Total duration from the date of Institution	:	Year/s	Month/s	Day/s
		03	10	26

(Vijaykumar S. Jatla),
Prl. Civil Judge & JMFC.,
Sira

J U D G M E N T

The plaintiff has filed the present suit against the defendants for relief of Specific Performance of Contract directing the defendant to execute absolute registered sale deed in respect of suit property in favour of the plaintiff or on their failure to do, to appoint court commissioner to execute registered sale deed and restraining the defendants from alienating the suit property to the third parties and costs.

2. Case of the plaintiff in brief is as under;

The land bearing Sy.No.16 of Neralagudda village, Bukkapatna hobli, Sira taluk, totally measuring 23 acres 02 guntas, out of which 18 acres of land is the ancestral property of defendants. The katha and pahani was stood in the name

of husband of 6th defendant and father of defendants No.1, 3 and 5 and they are in joint possession and enjoyment of the same. The father of defendants No.1, 3 and 5 and the husband of 6th defendant i.e. Papanna died on 12-1-1999. The defendants have approached the plaintiff and offered to sell 04 acres of land, out of 18 acres in Sy.No.16 of Neragalagudda village for financial crisis in the family and for the benefit and welfare of entire joint family in November-2010. The plaintiff agreed to purchase the said 04 acres of land i.e. suit schedule property for total sale consideration of Rs.3,00,000/-.. In pursuance to the agreed terms and conditions, a written agreement of sale was entered between plaintiff and the defendants on 20-11-2010 and plaintiff paid a sum of Rs.1,62,000/- to the defendants as earnest money towards part performance of agreement of sale and the parties agreed that the balance sale consideration amount of Rs.1,38,000/- shall be paid to the defendants at the time of execution of absolute sale deed to the plaintiff or his nominee within 6 months from the date of agreement of sale. The plaintiff approached the defendants several times and requested them to execute the registered sale deed. But the defendants on one or the other pretext postponing the same. The plaintiff got issued legal notice to the defendants on 29-9-2012 and same was served on them. For which neither they came and executed the sale deed nor replied for the notice. The plaintiff

is always ready and willing to perform his part of the contract to get the sale deed registered by paying balance sale consideration amount. But the defendants not obliging for the same. Very recently it came to the knowledge of the plaintiff that the defendants are making hectic efforts to sell the suit property in favour of others for higher value. Hence this suit.

3. After service of summons, the defendants remained absent and placed *exparte*.

4. In order to substantiate the case, the plaintiff examined himself as PW-1 and got marked 19 documents as Ex. P1 to P19. The plaintiff also examined one witness as PW-2.

5. On the basis of above pleadings, the following points arise for my consideration;

1. Whether the plaintiff proves that defendants have executed Agreement of Sale dated 20-11-2010 in his favour by receiving Rs.1,62,000/- earnest money, out of total sale consideration of Rs.3,00,000/-?

2. Whether the plaintiff proves that he is always ready and willing to perform his part of contract?

3. Whether the plaintiff proves that the defendants failed to perform their part of contract ?

4. Whether the plaintiff is entitled for relief sought for?
5. What Order or Decree ?
6. Heard the argument of learned Counsel for the plaintiff.
7. Perused the pleadings, oral and documentary evidence placed on record.
8. My findings on the above Points are as under;
 - Point No.1: In **affirmative**
 - Point No.2 : In **affirmative**
 - Point No.3 : In **affirmative**
 - Point No.4 : In **affirmative**
 - Point No.5 : **As per Final Order**For the following;

REASONS

9. **Point No.1:-**:- The plaintiff has filed this suit for specific performance of contract in respect of suit property, in pursuance of agreement of sale dated 20-11-2010 executed by the defendants in favour of the plaintiff. Though the defendants served, have not appeared and denied the averments of the plaint. In order to prove the case, the plaintiff examined himself as PW-1 and reiterated the plaint averments in his evidence and got marked Ex.P1 to 19. Ex.P1 is the agreement of sale dated 20-11-2010, Ex.P2 is the RTC in respect of suit property, Ex.P3 is the G.tree, Ex.P4 is the death certificate of father of the defendants No.1, 3 and 5, the father in law of 2nd

defendant and the husband of 6th defendant, Ex.P5 is the legal notice issued by the plaintiff to the defendants for calling upon them to execute registered sale deed as per agreement of sale. Ex.P6 to 19 are the postal receipts, cover and postal acknowledgements. PW-1 has not been cross-examined, as the defendants placed exparte. There is no specific defence by the defendants to the claim of the plaintiff.

10. The plaintiff also examined one witness as PW-2, who is the signatory to Ex.P1. PW-2 in his chief-examination deposed that in his presence the defendants have received Rs.1,62,000/- out of total sale consideration of Rs.3,00,000/- and executed agreement of sale dated 20-11-2010 and plaintiff has to pay remaining balance consideration amount at the time of executing registered sale deed. PW-2 is also not cross-examined by the defendants.

11. From the oral and documentary evidence on record, it is evident that Sy.no.16 of Neralagudda village, Bukkapatna hobli, Sira taluk, totally measuring 23 acres 02 guntas, out of which 18 acres of land is ancestral property of defendants and katha and pahani stood in the name of husband of 6th defendant and father of defendants No.1, 3 and 5 and the father in law of 2nd defendant. Ex.P1 which discloses that out of 18 acres, 04 acres have been sold to the plaintiff through agreement of sell dated 20-11-2010. The G.tree which discloses that the defendants

are the family members and suit property belongs to the defendants No.1 to 6. As there is no specific defence lead by the defendants to the claim of the plaintiff, it is seen that the plaintiff made out prima facie and substantial grounds in respect of execution of agreement of sale at Ex.P1. The plaintiff undisputedly without any specific defence by the defendants proved that they have executed agreement of sale and failed to perform their part of contract. For the above reasons, I answer point No.1 in 'Affirmative'.

11. Point No.2 & 3:- Since both the points are inter-linked, they are taken together for discussion.

As the plaintiff proved that the defendants have executed agreement of sale at Ex.P1 and failed to execute registered sale deed as stipulated under agreement of sale. The plaintiff to substantiate his readiness and willingness has requested the defendants several times to perform their part of contract by receiving balance sale consideration. When the defendants failed to perform the same, the plaintiff constrained to issue legal notice on 29-9-2012 calling upon the defendants to execute registered sale deed. There was no reply by the defendants to the said legal notice. Thereafter the plaintiff filed the suit for specific performance of contract in terms of agreement of sale at Ex.P1. The defendants non-performance of the contract substantiates the fact that the plaintiff's readiness and willingness to perform the contract and the defendants

unwillingness to perform their part of contract. From Ex.P1 to 19 which substantiates the case of the plaintiff and he proved his readiness and willingness to perform the contract. For the above reasons, I answer point No.2 and 3 in 'Affirmative'.

12. **Point No.4:-** From Point No.1 to 3 it is evident that the defendants failed to execute registered sale deed in favour of plaintiff as per Ex.P1. The plaintiff undisputedly established that the defendants have executed agreement of sale and failed to perform their part of contract inspite of giving sufficient time to perform the same. As the plaintiff established his case through oral and documentary evidence, he is entitled for the relief sought for. Hence, I answer this point No.4 in the 'Affirmative'.

15. **Point No.5:-** In view of my findings on Point No.1 to 4 in the affirmative, I proceed to pass the following;

ORDER

Suit of the plaintiff is decreed with costs.

The defendants are directed to execute registered sale deed in respect of suit property in favour of plaintiff, by receiving balance sale consideration amount of Rs.1,38,000/-, within three months from the date of this judgment.

In the event, the defendants fail to execute registered sale deed in respect of suit property,

by receiving balance sale consideration amount of Rs.1,38,000/-, the plaintiff is at liberty to get execute the registered sale deed in accordance with the law.

Further the defendants are restrained from alienating the suit property to the third parties.

(Dictated to the stenographer, transcribed, computerized and printout taken by him, then corrected, signed and pronounced by me in the open Court on 29-11-2016)

(Vijaykumar S.Jatla),
Prl. Civil Judge & JMFC.,
Sira

ANNEXURE

List of witnesses examined on behalf of the plaintiff:

P.W.1 – Manjunath

P.W.2 - Nagaraju

List of documents marked on behalf of the plaintiff:

Ex. P1 – Agreement of sale

Ex. P1(a) – Signature of PW-2

Ex. P2 - RTC

Ex. P3 – G. tree

Ex. P5 – Copy of notice

Ex. P6 to 19- Postal receipts, Postal acknowledgements & covers

List of witnesses examined on behalf of the defendants :

Nil

List of documents marked on behalf of the defendants :

Nil.

Prl.Civil Judge & JMFC.,
Sira.

