



Date of the commencement of the recording of the evidence 30.03.2016

Date on which the judgment pronounced 23.09.2020

Total Duration	Year	Month/s	Day/s
	05	03	12

(N.M.Ramesha)  
Prl. Senior Civil Judge,  
Karwar.

### **J U D G M E N T**

This is a suit filed by the plaintiff for Specific Performance of Agreement of Sale dated 11.4.2012 directing the defendant to execute the registered sale deed in respect of suit schedule property bearing Survey No.517/1 measuring 00.01.08 guntas situated at Chittakula village of Karwar Taluk in favour of the plaintiff by receiving balance consideration of Rs.1,50,000/- and permanent injunction restraining the defendant from alienating the suit schedule property.

**2. The case of the plaintiff in brief is as under:**

The defendant is the friend of plaintiff and they are known to each other since 2012. On 11.4.2012, the defendant has approached the plaintiff along with friend of plaintiff and disclosed his financial difficulties and requested the plaintiff to arrange for hand loan of Rs.3,00,000/-. The defendant has requested the plaintiff to purchase the suit schedule property. The plaintiff has decided to help the defendant on humanitarian ground and agreed to purchase the suit schedule property. The defendant has executed an agreement of sale dated 11.4.2012 in favour of the plaintiff agreeing to sell the suit schedule property for Rs 5,50,000/-by receiving earnest money of Rs.3,00,000/-. The plaintiff has requested the defendant to execute the registered sale deed on the same day. But, the defendant has stated that there are few technical difficulties in the record of rights and sought for time to execute the sale deed. The defendant again approached the plaintiff after some days and requested the plaintiff to pay an amount of Rs.1,00,000/- to remove the technical difficulties in the record of rights. Therefore, the plaintiff has paid an amount of Rs.1,00,000/- to the

defendant which was not entered in the agreement of sale. Therefore, for security purpose, the defendant has issued a cheque in favour of plaintiff for Rs.1,00,000/-.

3. It is further averred in the plaint that after execution of agreement and receipt of Rs.4,00,000/-, the defendant has not shown any interest to execute the sale deed. The plaintiff has requested the defendant to execute the sale deed in his favour by receiving balance amount of Rs.1,50,000/- which is ready with plaintiff who is ready to make the payment to the defendant. But, the defendant has postponed the execution of sale deed for one or the other reasons. The defendant is trying to sell the suit property to third person with a malafide intention to dupe the money of the plaintiff. Therefore, the plaintiff has approached the defendant and requested to execute the sale deed. But, the defendant has told that he has no interest to sell the suit property and also not ready to return the amount. The plaintiff has paid major portion of sale consideration and spent heavy amount to develop the suit property. The defendant has failed to execute the sale deed. This is stated to be the cause of action for the plaintiff to file this suit.

4. On service of suit summons, the defendant has appeared before this court through his learned counsel and filed the written statement denying the material averments made in the plaint. The suit of the plaintiff for specific performance and injunction is devoid of merits and deserves to be dismissed with exemplary costs. The suit of the plaintiff is barred by limitation. The court fee paid is stated to be insufficient. The defendant has not only denied the execution of agreement of sale dated 11.4.2012, but also receipt of earnest money of Rs.3,00,000/- and Rs.1,00,000/-.

5. According to defendant, had the plaintiff really paid such heavy amount of Rs.4,00,000/-, he would pay the same by way of crossed cheque or demand draft or pay order etc. The plaintiff would have at least aware of the date of payment of Rs.1,00,000/-. The plaintiff would have got the alleged agreement registered and sufficiently stamped. The defendant came to know about the created and false document, when he had received two notices dated 5.9.2013 from the plaintiff. Therefore, the defendant has replied both the notices separately on 23.9.2013. The plaintiff has stated that he is in possession of the suit property and has developed the suit property. But the

alleged agreement of sale is an unregistered document which is not admissible in the eye of law. It is on these among other grounds, the defendant has prayed for dismissal of the suit.

6. Based on the above pleadings, my learned Predecessor-in-office has framed the following issues:

### **ISSUES**

1. Whether the plaintiff proves that the defendant executed an agreement to sell on 11.4.2012 agreeing to sell the suit schedule property to him for a total sale consideration of Rs.5,50,000/- ?
2. Whether the plaintiff proves that he has paid Rs.4,00,000/- to the defendant towards the part sale consideration?
3. Whether the plaintiff proves that he was always ready and willing to perform his part of the agreement?
4. Whether the suit is barred by time?
5. Whether the plaintiff is entitled for the relief of specific performance as prayed for?
6. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
7. What decree or order?

7. In order to prove his case, the plaintiff got himself examined as P.W.1 and got the documents marked as Exs.P.1 to P.9. The plaintiff also examined one Shri. Krishnanand Tukaram Bhute, the advocate and Notary who is stated to be the scribe of the agreement in question as P.W.2. In order to prove his defence, the defendant got himself examined as D.W.1. However, the defendant has not produced any documents on his behalf.

8. I have heard the arguments on both the sides and perused the oral and documentary evidence placed on record.

9. On considering the oral and documentary evidence placed on record, now my answer to the above issues are as under:

Issue No.1 : In the **negative.**

Issue No.2 : In the **negative.**

Issue No.3 : In the **negative.**

Issue No.4 : In the **negative.**

Issue No.5 : In the **negative.**

Issue No.6 : In the **negative.**

Issue No.7 : As per final order,

for the following:

### **REASONS**

10. **Issues No.1 and 2:-** These two issues are inter-related and inter-connected to each other. Findings on issues No.1 has great bearing on issue No.2. These two issues revolve round the aspect of proof of execution of agreement of sale dated 11.4.2012 in respect of suit schedule property for sale consideration of Rs.5,50,000/- and passing of earnest money of Rs.4,00,000/- towards the part sale consideration. Therefore, for the sake of convenience, clarity and also to avoid repetition of facts and evidence being narrated separately, these two issues are taken up together for common discussion.

11. The learned counsel for plaintiff has argued with force that the oral evidence of P.W.1 and 2 and documentary evidence at Exs.P.1 to P.9 clearly establishes that the defendant being the owner in possession of the suit property has executed an agreement of sale dated 11.4.2012 vide Ex.P.8 agreeing to sell the suit property for Rs.5,50,000/- and received earnest money of Rs.3,00,000/-. After few days, the defendant has approached the plaintiff and received an amount of Rs.1,00,000/- to remove the technical difficulties in the record of rights. Therefore, in all, the plaintiff has paid Rs.4,00,000/- to the defendant

and the balance consideration is only Rs.1,50,000/-. It is further contended that it is who the defendant has brought the stamp paper to the office of P.W.2 who prepared and scribed the agreement of sale vide Ex.P.8 in the presence of plaintiff and defendant including two witnesses. Therefore, the plaintiff has proved the execution of agreement of sale vide Ex.P.8 by adducing the evidence of scribe and producing the document at Ex.P.8 and also proved the receipt of earnest money of Rs.4,00,000/-. The document at Ex.P.3 would indicate that for the security of Rs.1,00,000/- received by the defendant from plaintiff, the defendant has issued the cheque vide Ex.P.3. The evidence of P.W.1 and 2 is very much consistent and inconformity with document at Exs.P.1 to P.9. The plaintiff in all probabilities has proved the execution of agreement of sale and payment of part consideration of Rs.4,00,000/- and thereby, proved the issues No. 1 and 2.

12. Per contra, the learned counsel for defendant has vehemently contended that the defendant neither agreed to sell the suit schedule property in favour of plaintiff nor executed any agreement of sale or received any earnest money from the plaintiff. The defendant had no intention to sell the suit schedule property to anybody.

If really, the plaintiff has paid such heavy amount of Rs.4,00,000/-, then a natural human conduct and behaviour, he would pay the same either by way of crossed cheque or demand draft or pay order etc. and he would have know about the date of payment of Rs.1,00,000/-. If really, the plaintiff has taken possession of the suit schedule property as on the date of alleged agreement of sale, then the alleged agreement must have been registered and sufficiently stamped. But, the agreement in question vides Ex.P.8 is neither registered nor sufficiently stamped. Therefore, the very agreement at Ex.P.8 is not admissible in the eye of law.

13. It is further contended that when the defendant has specifically denied the execution of document in question and receipt of earnest money, then the plaintiff is required under law to examine the attesting witnesses. But, the plaintiff has not at all examined any attesting witnesses and thereby, failed to prove the execution of agreement in question. P.W.1 and 2 have not stated about the date on which, the plaintiff has paid Rs.1,00,000/- in favour of the defendant. In fact, P.W.2 has stated that no financial transaction was taken place in between plaintiff and defendant in his presence. The evidence of P.W.1 and

2 is not consistent and not in conformity with documents placed on record and thereby, the plaintiff has failed to prove the execution of agreement of sale including payment of earnest money.

14. Now, keeping the arguments canvassed on both the sides in mind, let us consider the pleadings, oral and documentary evidence placed on record. The plaintiff has filed his affidavit in chief-examination, wherein, he has reiterated the averments made in the plaint. The plaintiff has produced RTC extract of suit schedule property bearing Survey No.517/1, Mutation Extract vide MR No.451/2009-10 in respect of suit schedule property, Cheque dated 26.5.2012 for Rs.1,00,000/- drawn at State Bank of India, Legal Notice dated 5.9.2013, Reply Notice dated 23.9.2013, Police Acknowledgment, Police endorsement, Agreement of Sale dated 11.4.2012, copy of Private Complaint bearing No.23/2013 on the file of Learned JMFC, Karwar and they are marked at Exs.P.1 to P.9.

15. P.W.2 has filed his affidavit in chief examination wherein he has stated about the execution of alleged agreement of sale by the defendant in favour of

the plaintiff and payment of Rs 3,00,000/- by the plaintiff in favour of the defendant.

16. The defendant has filed his affidavit in chief-examination, wherein, he has reiterated the averments made in the written statement. The defendant has not produced any document on his behalf.

17. The defendant has not disputed that he is the owner of suit schedule property bearing Survey No.517/1 measuring 00.01.08 guntas situated at Chittakula Village of Karwar Taluk. It is also not in dispute that the plaintiff and defendant are the friends and they are known to each other since 2012.

18. But, the defendant has not only denied the execution of agreement of sale dated 11.4.2012 for sale of suit schedule property for Rs 5,50,000/-, but also receipt of total earnest money of Rs.4,00,000/-. According to defendant, the alleged agreement in question is false, concocted and created. Under these circumstances, as per the provisions of Section 101 of Indian Evidence Act, 1872, heavy burden lies on the plaintiff to prove the execution of agreement of sale dated 11.4.2012 and passing of earnest

money of Rs.3,00,000/- + Rs.1,00,000/- = Rs.4,00,000/- to the defendant with legal evidence before the court.

19. It is averred in the plaint and also stated by P.W.1 in his evidence that on 11.4.2012, the defendant has approached him along with one of his friend and requested to arrange for Rs.3,00,000/-. It is further averred in the plaint and also stated by P.W.1 in his evidence that the defendant being the owner of suit schedule property has requested him to purchase it. Therefore, he has agreed to purchase the suit property. It is also averred in the plaint and stated by P.W.1 in his evidence that the defendant has executed an agreement of sale vide Ex.P.8 on 11.4.2012 agreeing to sell the suit property for Rs.5,50,000/- by receiving an earnest money of Rs.3,00,000/-. He has also received an amount of Rs.1,00,000/- to remove the technical difficulties in the revenue records which was not entered in the agreement of sale and for its security, he has issued cheque for Rs.1,00,000/-.

20. P.W.2 has stated in his evidence that on 11.4.2012, the defendant and plaintiff came to his office and told that there was a mutual discussion between them to purchase the suit schedule property for Rs.5,50,000/-

and therefore, they have requested him to draft an agreement of sale and accordingly, he has drafted the agreement of sale and the plaintiff and defendant including two witnesses have signed the agreement and the defendant has said that he has received part consideration amount of Rs.3,00,000/- and hence, he has attested and Notarized the agreement.

21. The defendant in his written statement and also in his oral evidence has not only denied the execution of agreement of sale vide Ex.P.8, but also receipt of earnest money of Rs.4,00,000/- by way of cash. It is contended in the written statement and also stated by D.W.1 in his evidence that the plaintiff has created false story to engulf the property of the defendant. The defendant also denied his signature on Ex.P.8. Therefore, the document at Ex.P.8 has been confronted to D.W.1 and suggested that his signature is found a place in Ex.P.8; that the bond at Ex.P.8 has been purchased by him; that cheque and cheating cases are pending against him before Karwar court; that he has executed the document at Ex.P.8 in favour of plaintiff in the presence of witnesses and also in the presence of Notary; that he is liable to pay Rs.4,00,000/- with interest from the month of April 2012 in

favour of plaintiff and that he has agreed to sell the suit property in case of default of repayment of Rs.4,00,000/- and in order to avoid payment of Rs.4,00,000/-, he is deposing false evidence before the court.

22. But, all these material suggestions have been specifically denied by D.W.1. Therefore, it is said that the denied suggestions are always remained as suggestions only and not come in the way of plaintiff either to prove the execution of agreement of sale vide Ex.P.8 or payment of earnest money of Rs.3,00,000/- at the time of execution of agreement and Rs.1,00,000/- after execution of agreement. But on the other hand, it is forthcoming in the evidence of D.W.1 that he do not know and also not having any acquaintance with Shri. Pradeep Narayan Kurdekar and Shri. Abhishek Suresh Kalgutkar. Nothing is elicited in the evidence of D.W.1 to prove the execution of agreement in question or passing of earnest money of Rs.4,00,000/-. In fact, there is no specific suggestion to D.W.1 to show that both attesting witnesses have put their signatures in his presence and also in the presence of P.W.2.

23. The plaintiff has produced the document at Ex.P.8, if possible to prove the execution of agreement of

sale and passing of earnest money of Rs.4,00,000/-. As per the contents of Ex.P.8, there was a mutual agreement between the plaintiff and defendant in respect of sale of suit schedule property for Rs.5,50,000/- and the defendant stated to have received an amount of Rs.3,00,000/- on the date of agreement itself and agreed to execute the registered sale deed within six months by receiving balance amount of Rs.2,50,000/-. The registration expenses shall be borne by the purchaser and if the seller does not execute the sale deed within six months, the seller has to return the part consideration amount along with interest and charges etc.

24. But P.W.1 in his evidence has categorically admitted that prescribed time of six months ends in the month of October 2012, but he has not issued any legal notice before institution of suit calling upon the defendant to execute the sale deed by receiving balance sale consideration amount. He has further admitted that on 5.9.2013, he got issued legal notice through his advocate for which, the defendant has issued reply notice denying the execution of agreement of sale and passing of earnest money. However, the plaintiff did not choose to file any suit after issuance of legal notice vide Ex.P.4 dated

5.9.2013 and soon after the services of reply notice vide Ex.P.5 dated 23.9.2013. But, the defendant has kept quiet till 2015 without taking any steps against the defendant either after expiry of six months as stipulated in the alleged agreement of sale vide Ex.P.8 or at least issuance of notice vide dated 5.9.2013 or at least service of reply notice dated 23.9.2013 for the reasons best known to him. No explanation as such forthcoming either in the plaint averments or in the evidence of P.W.1. So, it is clear that the plaintiff has not at all complied with terms and conditions of agreement of sale vide Ex.P.8.

25. No doubt, as admitted by D.W.1 in his cross-examination that the plaintiff has lodged the complaint against him before Karwar Police Station in respect of execution of agreement and passing of total consideration amount of Rs.4,00,000/- on 26.9.2013 and the plaintiff also filed Private Complaint bearing PC No.23/2013 on the file of Learned JMFC, Karwar vide dated 24.10.2013 for the offences punishable U/secs.420, 461, 463, 465, 471, 504 and 506 of IPC. But, as could be seen from the police endorsements vide Exs.P.6 and P.7, the concerned police have issued endorsements to plaintiff that the dispute is a civil in nature and to approach the Civil Court. But, the

plaintiff has not taken any steps so as to initiate the civil proceedings against the defendant at the earlier point of time and he has kept quiet till 2015. No explanation as such forthcoming either in the plaint averments or in the evidence of P.W.1 in this regard. On the other hand, P.W.1 has feigned his ignorance as to what happened to the private complaint vide Ex.P.9 and also its stage of the proceedings.

26. As per the averments made in the plaint and as per the contents of affidavit in chief-examination of P.W.1, the plaintiff stated to have obtained the possession of the suit schedule property as on the date of agreement of sale. The plaintiff in his plaint averments and also in his evidence in chief-examination has stated that he is in possession of the suit schedule property and developed the land by incurring amount. But, the document at Ex.P.8 is executed on a stamp paper of Rs.100/-. The document at Ex.P.8 is neither sufficiently stamped nor registered before concerned Sub-Registrar. It is well settled position of law that when the possession is stated to have been handed over to the purchaser, then the agreement of sale is required to be registered as per law. But the document in

question is not only an unregistered document, but also insufficiently stamped document.

27. No doubt, as rightly pointed out by the learned counsel for the plaintiff that during the pendency of the suit, the plaintiff has paid duty and penalty of Rs.4,950/- and complied the provisions of Karnataka Stamp Act, 1957. However, the plaintiff has not complied the provisions of Section 17 of the Indian Registration Act, 1908. It is said that mere payment of duty and penalty on the agreement of sale in question is not sufficient to cure the defect of non registration.

28. It is pertinent to note here that if really, the plaintiff has entered into an agreement with defendant and if really, the defendant has executed an agreement of sale vide Ex.P.8 agreeing to sell the suit property for Rs.5,50,000/- by receiving an earnest money of Rs.3,00,000/- on the date of agreement itself, then the plaintiff being a purchaser and having parted with major portion of sale consideration amount of Rs.3,00,000/- would not have kept quiet without getting the document in question registered before appropriate authority. On the other hand, as a natural human being, he ought to have

get the agreement in question registered before the Sub-Registrar, Karwar. But he has not done so. No explanation as such forthcoming in this regard either in the plaint averments or in the evidence of P.W.1.

29. It is important to note here that the defendant has not only denied the execution of agreement of sale vide Ex.P.8, but also passing of earnest money of Rs.4,00,000/- including his signature on the agreement in question. Under these circumstances, heavy burden lies on the plaintiff to examine the attesting witnesses before the court so as to prove the execution of agreement of sale and also passing of earnest money of Rs.4,00,000/- to the defendant. But the plaintiff did not choose to examine the attesting witnesses before the court. No explanation as such forthcoming in the material placed on record for non examination of attesting witnesses. Therefore, an adverse inference has to be drawn against the case made out by the plaintiff.

30. No doubt, the document at Ex.P.8 would indicate that one Shri. Pradeep Narayan Kurdekar and another Shri. Abhishek Suresh Kalgutkar stated to have attested the document at Ex.P.8. But, D.W.1 in his

evidence has feigned his ignorance about the names and addresses of attesting witnesses. The plaint averments and the affidavit in chief-examination of P.W.1 also do not indicate or finds a place about the names and addresses of attesting witnesses. Further, the plaint averments and the affidavit in chief-examination of P.W.1 also very much silent as to the exact place at which the agreement in question was executed and before whom the agreement was executed and who are all present at the time of execution of agreement of sale. If really, the defendant has executed the agreement in question before the witnesses in the office of P.W.2, then the plaintiff could have mention the names of attesting witnesses and scribe including the place of alleged execution of agreement in question in the plaint and also in his affidavit in chief examination. Bot he not done so. No explanation as such forthcoming in the materials placed on record. In the absence of such an explanation, the say of plaintiff that the defendant has executed an agreement of sale in the presence of witnesses is highly doubtful and hence cannot be accepted.

31. No doubt, the plaintiff has examined the scribe of the document in question as P.W.2 before the court. But,

the evidence of P.W.2 do not come in the way of plaintiff to prove the execution of agreement in question vide Ex.P.8 and also passing of earnest money of Rs.4,00,000/-. Because, though P.W.2 in his affidavit in chief-examination has stated that on 11.4.2012, the plaintiff and defendant came to his office and requested him to draft an agreement of sale and accordingly, he has drafted the agreement of sale and the plaintiff and defendant have signed the agreement in his presence, but, during the course of his cross-examination, he has stated that two staffs are working in his Notary office and their signatures do not finds a place in the agreement in question.

32. It is forthcoming in the evidence of P.W.2 that he used to obtain Aadhaar Card, Pan Card and other Identity Cards from his clients for confirmation of transaction and after verification, he used to take the signatures of both the parties in the Notary register. But, the document at Ex.P.8 do not indicate or finds a place about the Notary registration number and its entries and also date of entry. P.W.2 has stated in his affidavit that it is who the defendant has purchased and brought the stamp paper. But on the contrary, in his cross-examination, P.W.2 has stated that both plaintiff and defendant have brought

the stamp paper and he has also asked both plaintiff and defendant to furnish Aadhaar card. But, he further admitted that he has not mentioned about the Aadhaar card number of plaintiff and defendant in the agreement of sale vide Ex.P.8. P.W.2 has also stated that no money transaction was taken place in his presence. So, the very evidence of P.W.2 itself falsifies the case made out by the plaintiff.

33. It is necessary to note here that if really, the agreement in question vide Ex.P.8 was executed in the office of P.W.2 and both attesting witnesses have attested the document in question in the office of P.W.2, then the plaintiff ought to have averred in his plaint and also stated in his evidence about the names and addresses of both the attesting witnesses or at least he could have examine them before the court or at least the plaintiff could have summon the Notary register and get it marked in the evidence of P.W.2 so as to prove the genuineness, authenticity and validity of document at Ex.P.8 and also to prove its execution and its attestation. But, the plaintiff has not done so. No explanation as such forthcoming either in the plaint averments or in the evidence of P.W.1 and 2 for non-examination of attesting witnesses and non-

summoning of Notary register. In the absence of such an explanation, an adverse inference has to be drawn against the case made out by the plaintiff.

34. It is important to note here that the plaintiff is not a rustic villager. On the other hand, it is forthcoming in the evidence of P.W.1 that he is studied up to 2nd PUC and doing Goldsmith work. He is having bank account and has been submitting income-tax returns. It is also forthcoming in the evidence of D.W.1 that he used to purchase gold ornaments from plaintiff and therefore, he is having acquaintance with plaintiff. So, it is crystal clear that the plaintiff and defendant are not the strangers, but they are having acquaintance with each other and the plaintiff was having worldly knowledge about the loan transaction and commercial transaction.

35. Therefore, if really, there was a true transaction as per Ex.P.8 in respect of sale of suit schedule property by the defendant in favour of plaintiff and if really, the plaintiff has paid earnest money of Rs.3,00,000/- on the date of agreement itself and Rs.1,00,000/- on the subsequent date, then the plaintiff being the business man and also having worldly knowledge about the bank

transaction and commercial transaction would have get the agreement in question registered before appropriate authority or at least get the sale deed registered at the earlier point of time by paying remaining balance amount of Rs.1,50,000/- and as a natural human conduct, he would not have kept quiet till 2015. But, he has not done so. So, all these inaction on the part of plaintiff would create a doubt about the genuineness, authenticity and validity of agreement in question vide Ex.P.8. Therefore, utmost confidence cannot be reposed on the evidence of P.W.1 and 2 and much reliance cannot be placed on the document at Ex.P.8 in the absence of evidence of attesting witnesses.

36. It is further averred in the plaint and also stated by P.W.1 in his evidence that on the date of execution of alleged agreement of sale, he has paid an advance amount of Rs.3,00,000/- and thereafter, the defendant has received an amount of Rs.1,00,000/- to remove the technical difficulties in the revenue records. But, as already stated above, the defendant has specifically denied even passing of consideration of Rs.3,00,000/- on the date of alleged agreement and also receipt of Rs.1,00,000/- on the subsequent date of

agreement of sale. No doubt, in the recitals of Ex.P.8, it is mentioned that the purchaser has paid part consideration amount of Rs.3,00,000/- by way of cash to the seller on the date of agreement of sale at Karwar.

37. But, except these bald recitals in page No.3 of agreement in question, there is absolutely no material to show that the plaintiff has paid an amount of Rs.3,00,000/- to the defendant on the date of agreement of sale. It is the evidence of P.W.2 that the defendant has said that he has received part consideration amount of Rs.3,00,000/- from the plaintiff. This necessarily indicate that no consideration was passed from the plaintiff to the defendant either in the presence of P.W.2 or in the presence of attesting witnesses. Because, P.W.2 in his cross-examination has specifically stated that no money transaction was taken place in his presence. So, the very evidence of P.W.2 falsify the case of the plaintiff that on the date of agreement of sale, he has paid Rs.3,00,000/- to the defendant.

38. It is an admitted fact that as per the provisions of Income Tax Act, any money transaction which exceeds Rs.20,000/-, shall be by way of cheque. P.W.1 himself admitted that in spite of payment of advance amount of

Rs.3,00,000/- by way of cash, he could have pay the same either by way of cheque or demand draft or pay order. But he has not done so. Even according to the plaintiff that he is very much aware that the payment shall be made only through cheque, demand draft and pay order if the amount exceeds Rs.20,000/-. P.W.1 also admitted that there was no impediment for him to pay the advance amount either by way of cheque or demand draft or pay order. But, he has not done so. No explanation as such forthcoming in the materials placed on record.

39. Admittedly, the plaintiff is not a rustic villager. As admitted by the plaintiff that he has has studied up to 2nd PUC and doing goldsmith work. He has also maintained an account in the bank and has been submitting income tax returns to the concerned income tax department. However, the plaintiff neither produced bank statement nor income tax returns or any other authenticated document to show that on the date of agreement of sale itself, he paid Rs 3,00,000/- to the defendant. The plaintiff also not produced any documents to show that he has mentioned the payment of advance amount of Rs.3,00,000/- to the plaintiff in his Income tax returns.

40. No doubt, the plaintiff has further stated in his cross-examination that he has sold the gold ornaments and therefore, he was having that much of amount. But, in order to substantiate the same, the plaintiff has not produced any materials before the court. Even the plaintiff's averments and the evidence of P.W.1 and 2 are very much silent about the dimensions of advance amount of Rs.3,00,000/- stated to have been paid to defendant on the date of agreement of sale. The plaintiff also did not examine any attesting witnesses to prove the passing of earnest money to the defendant on the date of agreement of sale. In the absence of such materials on record, the contention of the plaintiff that on the date of agreement of sale itself, he has paid Rs.3,00,000/- to the defendant is highly doubtful and therefore, cannot be accepted.

41. It is further averred in the plaint and also stated by P.W.1 in his evidence that again the defendant came after some days of execution of agreement of sale and received Rs.1,00,000/- to remove the technical difficulties and for the security of said payment of Rs.1,00,000/-, he has issued cheque for Rs.1,00,000/-. But, the plaintiff's averments and the evidence of P.W.1 is very much silent as to the date, time and place at which, the

plaintiff stated to have paid Rs.1,00,000/- to the defendant including the date of cheque, name of the bank and other particulars. If really, the plaintiff has paid Rs.1,00,000/- to the defendant subsequent to the date of agreement of sale, then the plaintiff could have plead and stated in his plaint averments and also in his evidence about the date, time and place of payment of said amount and there must be a recitals in this regard in the agreement in question vide Ex.P.8. But, the agreement of sale vide Ex.P.8 is also very much silent about the payment of Rs.1,00,000/- subsequent to the date of agreement of sale.

42. No doubt, it is averred in the plaint and also stated by P.W.1 in his evidence that the payment of said amount of Rs.1,00,000/- was not entered in the agreement of sale and hence, for its security purpose, the defendant has issued cheque for Rs.1,00,000/-. Further, when Ex.P.3 cheque was confronted, the defendant has admitted that is the cheque which is issued by him to the plaintiff. But, there is no document to show that the defendant has issued the cheque for Rs.1,00,000/- to the plaintiff for the security purpose in respect of payment of Rs.1,00,000/- subsequent to the date of agreement.

43. It is pertinent to note here that if really, the plaintiff has paid Rs.1,00,000/- to the defendant subsequent to the date of agreement and if really, the defendant has issued Ex.P.3 for the security purpose, then the plaintiff could have got mentioned the same in the agreement of sale vide Ex.P.8. But he has not done so. On the other hand, it is forthcoming in the evidence of D.W.1 that the plaintiff has been doing goldsmith work and he used to purchase gold ornaments from the plaintiff on credit basis, for which, he used to issue the cheque in favour of plaintiff whenever he was not having money and accordingly, the plaintiff sells the gold ornaments on credit basis and in this regard, there was a continuous gold transaction and the cheques issued in favour of the plaintiff were remained with plaintiff even after payment of loan amount and because of confidence reposed on the plaintiff, he did not ask the plaintiff to return the cheque.

44. So, all these materials placed on record would indicate that the cheque vide Ex.P.3 is relates to other transaction between plaintiff and defendant in respect of purchase of gold ornaments on credit basis and not relates to the payment of further earnest money Rs.1,00,000/- to the defendant subsequent to the date of agreement of

sale. Moreover, the plaint averments and evidence of P.W.1 also do not indicate or establish as to what are such technical difficulties found in the record of rights. In the absence of such materials on record, the contention of the plaintiff that subsequent to the date of agreement of sale, he has also paid Rs.1,00,000/- to the defendant and for the security purpose, the defendant has issued cheque vide Ex.P.3 is highly doubtful and therefore, cannot be accepted.

45. Therefore, the arguments of learned counsel for plaintiff that the oral evidence of P.W.1 and 2 and documentary evidence at Exs.P.1 to P.9 clearly establishes the execution of agreement of sale and passing of earnest money of Rs.4,00,000/- and the plaintiff has examined scribe of the document and thereby proved the execution of agreement and passing of earnest money is not sustainable under law and therefore, cannot be accepted.

46. On the other hand, there is some legal force in the submission of learned counsel for defendant that the oral evidence of P.W.1 and 2 and documentary evidence at Exs.P.1 to P.9 do not establish the execution of agreement of sale and also passing of earnest money and the

document at Ex.P.8 being unregistered document is also not admissible in the eye of law and the plaintiff has neither examined attesting witnesses nor any independent witnesses to prove the execution of agreement of sale and passing of earnest money and thereby the plaintiff has failed to prove the execution of agreement of sale and passing of earnest money.

47. Hence, for the reasons discussed above, I hold that the plaintiff has failed to prove that the defendant has executed an agreement of sale on 11.4.2012 agreeing to sell the suit schedule property for sale consideration of Rs.5,50,000/- and he has paid Rs.4,00,000/- to the defendant towards part sale consideration. Hence, ***I answer issues No.1 and 2 in the negative.***

48. **Issue No.3**:- The learned counsel for plaintiff has argued with force that the plaintiff has already paid Rs.4,00,000/- to the defendant towards the part sale consideration and he was ready to pay remaining balance amount of Rs.1,50,000/- and in spite of issuance of notice vide Ex.P.4 and in spite of service of notice, the defendant has failed to execute the sale deed and thereby the

plaintiff has proved that he was always ready and willing to perform his part of contract.

49. On the other hand, the learned counsel for defendant has vehemently contended that the plaintiff neither proved the execution of agreement of sale nor passing of earnest money of Rs.4,00,000/-. Even after six months of execution of alleged agreement of sale, the plaintiff has kept quiet and even though he has issued notice vide Ex.P.4, but in spite of service of reply notice vide Ex.P.5, the plaintiff neither filed the suit at the earlier point of time nor taken any steps against the defendant and thereby, failed to prove that he was always ready and willing to perform his part of contract.

50. In the light of the arguments canvased on both the sides, I have carefully perused the averments made in the plaint and also evidence placed on record. As per the provisions of Section 16 of Specific Relief Act, 1963, the Specific performance of a contract cannot be enforced in favour of a person, who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him and he has to prove the readiness and

willingness to perform the contract according to its true construction.

51. It is averred in the plaint and also stated by P.W.1 in his evidence that he has paid in all Rs.4,00,000/- to the defendant and remaining amount of Rs.1,50,000/- was ready with him and he is ready to make payment to the defendant. The defendant has postponed the registration of sale deed. But, except these averments, there is absolutely no pleadings in the plaint and nothing is stated in the evidence of P.W.1 to show that the plaintiff was always ready and willing to perform his part of contract. The plaint averments and evidence of P.W.1 is very much silent about the readiness and willingness to perform the part performance of the agreement by the plaintiff.

52. As per the agreement of sale vide Ex.P.8, the remaining amount of Rs.2,50,000/- shall be paid by the purchaser to the seller at the time of sale deed within six months. So, it is clear that time was fixed for execution of sale deed and also payment of remaining amount. The plaint averments and evidence of P.W.1 is very much silent as to what were the technical difficulties in the record of

rights. P.W.1 has categorically admitted in his evidence that six months was expired and elapsed in the month of October, 2012. But, the plaintiff has issued notice vide Ex.P.4 only in the month of September 2013. Even after service of reply notice vide Ex.P.5 dated 23.9.2013, the plaintiff neither filed the suit nor taken any steps at earlier point of time against the defendant.

53. P.W.1 has admitted in his evidence that he has issued notice on 5.9.2013 and the defendant has replied the notice on 23.9.2013 and when the defendant has denied the execution of sale deed and refused to execute the sale deed, he was required to file the suit at the earlier point of time. But he has not done so. But, he has filed the suit in the year 2015. P.W.1 further admitted that before institution of suit in the year 2015, he has not at all issued any legal notice to the defendant calling upon him to come forward to execute the sale deed. Under these circumstances, the contention of learned counsel for plaintiff that the plaintiff was always ready and willing to perform his part of contract is not sustainable under law and therefore, cannot be accepted.

54. On the other hand, there is some legal force in the submission of learned counsel for defendant that the plaintiff was not ready and willing to perform his part of contract and though the defendant has replied the notice denying the execution of agreement, the plaintiff has kept quite and thereby failed to prove his readiness and willingness to perform his part of alleged contract. Therefore, for the reasons discussed above, this court is of the considered view that the plaintiff has failed to comply the mandatory provisions of Section 16 of Specific Relief Act, 1963 and thereby, failed to prove that he was always ready and willing to perform his part of contract. Hence, ***I answer issue No.3 in the negative.***

55. **Issue No.4:-** This issue is revolve round the aspect of point of limitation. The defendant in para No.4 of the written statement has contended that the suit is time barred. But, though the defendant has taken this bald contention, same has not been amplified before the court in any manner. Because, the defendant neither specifically pleaded nor stated in his evidence as to how the suit of the plaintiff is time barred.

56. The provisions of Article 54 of Limitation Act, 1963 prescribes 3 years to file a suit for Specific Performance of Contract. As per this provision of law, the time begins to run from the date fixed for the performance or if no such date is fixed, when the plaintiff has noticed that performance is refused.

57. In the present case, the plaintiff has issued notice vide Ex.P.4 on 5.9.2013. The defendant has replied the notice vide Ex.P.5 on 23.9.2013 and denied the execution of agreement of sale and also refused to execute the sale deed. Hence, the plaintiff has filed the suit before the court on 11.06.2015 which is well within time.

58. Further, in the document at Ex.P.8, time of six months was fixed for execution of sale deed. The alleged agreement of sale is dated 11.4.2012. The duration of six months ended in the month of October 2012. The plaintiff has instituted the suit before the court on 11.06.2015 which is also within time. Viewed from any angle, the suit of the plaintiff filed on 11.06.2015 is well within time. Therefore, the contention of the defendant that the suit of the plaintiff is time barred is not sustainable under law and therefore, cannot be accepted. Hence, I hold that the

defendant has failed to prove that the suit of the plaintiff is barred by time. Hence, ***I answer issue No.4 in the negative.***

59. **Issues No.5 and 6**:- These two issues are revolve round the aspect of plaintiff's entitlement for the relief of Specific Performance of Contract and relief of Permanent Injunction. The plaintiff has sought for direction to the defendant to execute the registered sale deed in respect of suit property by receiving remaining sale consideration of Rs.1,50,000/- and restrained the defendant from alienating the suit schedule property to any body. But, the plaintiff neither proved the execution of agreement of sale vide Ex.P.8 dated 11.4.2012 nor passing of earnest money of Rs.4,00,000/-.

60. The burden cast upon the plaintiff has to be effectively discharged, lest the suit will have to be dismissed not withstanding some defects or deficiencies found in the case made out by the defendant. Therefore, it is said that the plaintiff has to stand or fall on his own strength and cannot take the disadvantage of the weakness of the defendant. But, this initial burden has not be effectively discharged by the plaintiff before the court.

The very alleged cause of action to file the suit is appears to be highly doubtful. The plaintiff having failed to prove the execution of agreement of sale and passing of earnest money of Rs.4,00,000/- is neither entitled for relief of specific performance of agreement of sale nor consequential relief of permanent injunction. It is in this sense, I hold that the plaintiff is not entitled for any relief as sought for in the plaint. Hence, ***I answer issues No.5 and 6 in the negative.***

61. **Issue No.7**:-In view of my findings on issues No.1 to 6, I proceed to pass the following:

### **O R D E R**

The suit of the plaintiff is hereby  
dismissed with costs.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, the transcript corrected by me and then pronounced in the open Court on this the **23<sup>rd</sup> day of September, 2020**)

**(N.M.RAMESHA)**  
Prl. Senior Civil Judge,  
Karwar

**ANNEXURES****1. List of Witnesses examined for Plaintiff:**

P.W.1 : Shri. Sunil Anandu Kurdekar  
P.W.2 : Shri. Krishnanand Tukaram Bhute

**2. List of Witnesses examined for Defendant:**

D.W.1 : Shri. Mahesh Jneneshwar Gajinkar

**3. List of documents marked for plaintiff:**

Ex.P.1 : RTC extract  
Ex.P.2 : Mutation Register Extract  
Ex.P.3 : Cheque  
Ex.P.4 : Copy of Legal Notice  
Ex.P.5 : Reply Notice  
Ex.P.6 : Police Acknowledgment  
Ex.P.7 : Police Endorsement  
Ex.P.8 : Agreement of Sale  
Ex.P.8(a) : Signature of plaintiff on Ex.P.8  
Ex.P.8(b) : Signature of defendant on Ex.P.8  
Ex.P.9 : Office copy of Private Complaint  
No.23/2013

**4. List of documents marked for defendant:**

- Nil -

Prl. Senior Civil Judge,  
Karwar

