



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
HAGARIBOMMANAHALLI**

Dated this the 15th day of June 2026

PRESENT

Sri. MADHUSUDHANA D.K. B.A. LL.B.
Senior Civil Judge & JMFC
Hagaribommanahalli

RA No.16/2024

**APPELLANT: Smt. Vadra Giddamma
W/o Late Vadra Maliyappa
R/o Bachigondanahalli Village
Hagaribommanahalli Taluk.
(By Sri. C.Basavaraja Advocate)**

V/s

**RESPONDENT: Sri. Banakara Basavaraj
S/o B. Kotrappa
Aged 53 years
R/o 3rd Block, Ward No.3
Hagaribommanahalli Taluk.
(By Sri. S.L.G Advocate)**

Date and nature of the Order or Decree appealed against	:	Against the Judgment and decree Passed by the Civil Judge and JMFC in Hagaribommanahalli in OS. No.236/2016 dated 28.09.2022
Date of Institution of the Appeal	:	28.08.2024
Date of Judgment	:	15.06.2026
Duration of appeal	:	Year Months Days 01 09 18

MADHUSUDHANA D K
Senior Civil Judge & JMFC
Hagaribommanahalli

JUDGMENT

The above Appeal is filed by the Appellant/Defendant being aggrieved by the Judgment and Decree passed by the Civil Judge and JMFC in Hagaribommanahalli in OS No.236/2016 by Judgment and Decree dated 28.09.2022. The Appellant was the Defendant and the Respondent was the Plaintiff before the Trial Court and therefore, the rank of the Parties before the Trial Court will be followed in future for the sake of convenience.

2. There is a delay of 546 Days in filing the above Appeal and therefore, the Appellant/Defendant has filed the IA No.1 for condoning of the said delay and the Appellant is examined as PW1 in support of the IA No.1 and got marked Certified Copies of Trial Court Judgment and Decree as per Ex.P1 and Ex.P2.

3. The facts leading up to filing of the above Appeal are as follows:

a) *The Plaintiff has filed the Suit in OS No.236/2016 against the Defendant for the relief of Specific Performance of Contract in respect of an unregistered Sale Agreement dated 15.12.2014 executed by the Defendant by agreeing to sell the Suit Schedule Property bearing Sy.No.451/B measuring 2A of Bachigondanahalli Village. The Plaintiff has pleaded that, the Defendant was the Absolute Owner of the Suit Schedule Property and she had agreed to sell the same for a sum of ₹ 2 Lakhs and by receiving Advance Sale Consideration Amount of ₹ 1,90,000/-, the Defendant had executed Sale Agreement dated 15.12.2014 in the presence of Witnesses. The Defendant had also agreed to receive the*

Balance Sale Consideration of ₹ 10,000/- and to execute the Registered Sale Deed in favor of the Plaintiff. But, the Defendant had failed to honor the Agreement and therefore, a Legal Notice dated 02.11.2016 was issued to the Defendant by fixing the date of execution of Sale Deed on 18.11.2016. In spite of Service of the Legal Notice, the Defendant did not turn up before the Sub-Registrar's Office and therefore, the Plaintiff has filed the Suit and prayed for the Decree.

- b) *Before the Trial Court, the Defendant had received the Suit Summons and she had appeared through the very same Advocate who filed this Appeal. The Defendant has filed her Written Statement by denying the Case of the Plaintiff. The Defendant had contended that, there was a Liquor Business between the Plaintiff and Defendant's son and Plaintiff had given Liquor to Defendant's Son on Credit Basis and therefore, towards Security for ₹ 1 Lakh worth Liquor purchased on Credit Basis by her son, the Defendant had executed Agreement of Sale of ₹ 2 Lakhs though, the Price of the Land is more than ₹ 10 Lakhs. The Suit Schedule Property was granted to the husband of the Defendant by the Government and after the death of her husband, the Plaintiff got Mutation but, her sons and daughters all are having equal Share in the Property and further, the Land was granted under SCPTCL Act and therefore, the Prior Permission of the Government is required to sell the Suit Schedule Property. For all these reasons, the Defendant had prayed for dismissing the Suit.*
- c) *On the basis of the above pleadings, the Trial Court has framed the Issues for its consideration as follows:*

ISSUES

- 1) Whether the plaintiff proves that the Defendant has executed the regular registered sale dated 15.12.2014 in favor of the Plaintiff?**
- 2) Whether the plaintiff proves that Plaintiff is ready and willingness to perform the contract?**
- 3) Whether the plaintiff proves that Defendant failed to perform the part of contract?**
- 4) Whether the Plaintiff is entitled to relief sought for?**
- 5) What Order or Decree?**

d) Before the Trial Court, the Plaintiff has examined PW1 and PW2 by marking Ex.P1 to Ex.P9 along with relevant signatures. The Defendant and her Counsel have not conducted the cross-examination of the PW1 and PW2 and the Defendant had not adduced any Oral and Documentary Evidence in support of her contentions.

e) The Trial Court has heard the arguments and by answering the Issue No.1 to 4 in the Affirmative ultimately Decreed the Suit of the Plaintiff on 28.09.2022.

4. Being aggrieved by the above Judgment and Decree passed in OS No.236/2016 dated 28.09.2022, the Appellant/Defendant has preferred the above Appeal on the following:

GROUND

- i) *The Trial Court has failed to appreciate the fact that, the Defendant had executed Sale Agreement towards Security for the Transaction between Plaintiff and Defendant's son in respect of Liquor Business*
- ii) *The Trial Court has not properly appreciated the Oral and Documentary Evidence and it has not granted any opportunity to the Defendant to lead her Evidence*
- iii) *The Trial Court has not considered the fact that, the Defendant's husband belongs to Bhovi Community and it was granted to him and on his death, the Defendant obtained change of Mutation only and her Children are having equal rights in the Property*
- iv) *On the other formal grounds also, the Judgment and Decree of the Trial Court is liable to be set aside and hence, the Appellant/Defendant has prayed for setting aside the Judgment and Decree in OS No.236/2016 dated 28.09.2022*

5. I have heard the arguments of the Rival Parties and I have appreciated the Factual and Legal Aspects involved in the case.

6. In view of Rival Contentions raised by the Parties and in view of the Material placed before this Appellate Court, the Points that arise for My consideration are as follows:

POINTS

- 1) ***Whether the delay of 546 Days in filing the Appeal can be condoned?***
- 2) ***Whether the Appellant shows that, the findings recorded by the Trial Court is contrary to the Oral and Documentary Evidence on Record?***
- 3) ***Whether the Judgment of the Trial Court calls for interference by this Appellate Court?***
- 4) ***What Order or Decree?***

7. After having heard the arguments and on careful perusal of the Trial Court Record, My findings on the above Points are as follows.

ANSWERS

POINT NO. 1 : In the Affirmative

POINT NO. 2 : In the Negative

POINT NO. 3 : In the Negative

***POINT NO. 4 : As per the final Order,
for the following:***

REASONS

8. ***POINT NO.1*** : There is a delay of only 546 Days in filing the above Appeal and by considering the Merits of the Appeal, the said delay in filing the Appeal is liable to be condoned by allowing the IA No.1 and hence ***the Point No.1 is answered in the Affirmative.***

9. ***POINTS NO.2 and 3*** : To avoid repetition of giving same reasons again and again, these two interlinked Issues are discussed together.

10. The Defendant had contended in her Written Statement about alleged Liquor Business of her son with the Plaintiff on Credit Basis and executing Sale Agreement towards Security for ₹ 1 Lakh worth Liquor purchased on Credit Basis by her son from the Plaintiff. Similarly, the Defendant had contended that, *the Suit Schedule Property was granted to her husband under PTCL Act and therefore, Permission of the Government is required to sell the Suit Schedule Property.* But, the Ex.P7 shows that, *the Defendant had obtained the change of Mutation of the Suit Schedule Property on the death of her husband in a Family Partition dated 30.12.2006.* The Defendant has not conducted the cross-examination of the PW1 and PW2 to put her Case to the Witnesses by way of cross-examination. The Appellant and her Advocate have pleaded in the Appeal that, *the Trial Court has not permitted the Defendant to conduct the cross-examination of Plaintiff's Witnesses and to adduce Defendant's Evidence.* But, the Trial Court Record shows that, *the cross-examination was taken as nil and the Case was posted for Defendant's Evidence by Order dated 06.07.2019.* The Trial Court Record also shows that, *on 20.01.2020, the Trial Court has allowed the IA No.5 and IA No.6 of the Defendant and posted the Case for cross-examination of the PW1 and PW2 and it was Adjourned to 15.06.2020 due to Covid-19 Pandemic.* Thereafter, the Case was posted for the cross-examination of PW1 and PW2 from 28.09.2021 to 03.08.2022. But, the Learned Advocate appearing for the Defendant has not conducted the cross-examination of the Plaintiff's Witnesses and the Defendant has also not adduced any Oral and Documentary Evidence. Therefore, the contentions of the Defendant are not proved by her

for the reason of non cross-examination of the PW1 and PW2 to put her Case by way of cross-examination. Therefore, the Court has to accept the Evidence tendered by the Plaintiff. The above Proposition is laid down by the Hon'ble Supreme Court in the Case of **Sarwan Singh Vs State of Punjab** reported in **(2003) 1 SCC 240**, the Hon'ble Apex Court has held as follows:

It is a rule of essential Justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination it must follow that the evidence tendered on that issue ought to be accepted.

11. The Trial Court Record shows that, *as per Postal Acknowledgement Ex.P5, the Ex.P3 Legal Notice was duly served on the Defendant* but, the Defendant did not give any Reply Notice to the Plaintiff by informing about the contentions raised by her in her Written Statement. Therefore, due to the failure of the Defendant and her on Record Advocate to conduct the cross-examination of the PW1 and PW2, the above Appeal is filed by the Defendant by contending that, *the Trial Court has not granted any opportunity to her for her Evidence does not inspire any confidence in My mind.* The Trial Court Record clearly shows about giving sufficient opportunities for the Defendant and her on Record Advocate to conduct cross-examination of PW1 and PW2 and for adduction of Defendant's Evidence. Therefore, I do not see any Merits and Bonafide Reasons being made out by the Defendant to set aside the Judgment and Decree passed by the

Trial Court. Therefore, ***the Points No.2 and 3 are answered in the Negative.***

12. ***POINT NO.4:*** For the above discussion, I proceed to pass the following:

ORDER

The IA No.1 is allowed and delay of 546 Days in filing the Appeal is hereby condoned.

The Appeal filed by the Appellant questioning the Correctness of the Judgment and Decree dated 28.09.2022 recorded by the Trial Court in OS No.236/2016 is hereby dismissed with Costs.

The Judgment and Decree in OS. No. 236/2016 dated 28.09.2022 is hereby Confirmed.

Draw Decree Accordingly.

Send back the Trial Court Records along with a Copy of this Judgment.

MADHUSUDHANA D K
Senior Civil Judge & JMFC
Hagaribommanahalli

ANNEXURES**List of witnesses examined for the Petitioners**

PW1:Sri.V.Giddamma

List of documents marked for the Petitioners

Ex.P1:Certified Copy of Judgment in OS No.236/2016

Ex.P2:Certified Copy of Decree in OS No.236/2016

List of witnesses examined for the Respondent

NIL

List of documents marked for Respondent

NIL

MADHUSUDHANA D K
Senior Civil Judge & JMFC
Hagaribommanahalli