

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC., AT HARAPANAHALLI**

PRESENT:

**Smt.Bharathi.M., B.Com., L.L.B.
Senior Civil Judge & JMFC .,
Harapanahalli**

DATED THIS THE DAY 23rd JULY 2021

O.S.No.56/2020

PLAINTIFF:

Smt. D.E.Anitha W/o Shekarappa H
aged about 50 years, Occ: Agri.,
R/o Ramaghatta village,,
Harapanahalli taluk, Bellary district.

(Pleader P.P., Advocate)

VS

DEFENDANTS:

Smt. Madivalara Rudramma
W/o Late Gorappa, Aged about
55 years, Occ: Agri.,
R/o Ramaghatta village,
Harapanahalli taluk, Bellary district.

(By. Ex.Parte)

Date of Institution of Suit : 02/07/2020

Date of Commencement of
Recording of Evidence. : 04/03/2021

Nature of Suit : **SPECIFIC PERFORMANCE**

Date on which the judgment
is pronounced : **23/07/2021**

	Year/s	Month/s	Day/s
TOTAL DURATION:	01	00	21

(BHARATHI.M.)
Senior Civil Judge & J.M.F.C.,
Harapanahalli.

JUDGEMENT

1. The plaintiff has filed the present suit against the defendant for specific performance of contract with direction to the defendant to execute the sale deed after receiving the balance sale consideration amount with such other relief as the court thinks fit.

2. The brief facts of the case of the plaintiff is that, the defendant Smt. Madivarala Rudramma is the owner of the suit schedule property measuring 4 acres 26 cents in Sy.No. 165/A. To clear the hand loan and for the purpose of her legal necessity and family benefit and family expenses the defendant has approached the plaintiff and offered to sell the suit schedule property measuring 4 acres 26 cents in favour of plaintiff for a total consideration amount of Rs.6,00,000- and she has executed a unregistered sale agreement dated: 23/05/2019 in favour of plaintiff and she has received advance sale consideration amount of Rs.5,00,000/- from the plaintiff in the presence of witnesses. The defendant has agreed to execute the register sale deed in favour of plaintiff within 3 months by receiving balance sale consideration amount and obtaining necessary documents pertaining to the suit schedule property. But the defendant has refused to

receive the legal notice. Then also, on 10/6/2020 the plaintiff was waiting for defendant in the sub register office from 10.00 am to 5.00pm to get the register sale deed. But the defendant did not come forward to register the sale deed in favour of plaintiff. The plaintiff is /was always ready and willing to perform her part of contract and also she is ready to pay the balance sale consideration amount of Rs. 1,00,000/- to the defendant and to get the register sale deed. Hence, the suit.

3. After filing of this suit, this court has issued summons to the defendant. After service of suit summons the defendant has not appeared before the court, hence she was placed exparte. Thereafter, this case was posted for plaintiff evidence.

4. Based on the points are arisen for my consideration:

POINTS

1. **Whether the plaintiff proves that, the defendant has executed an agreement of sale dated 23/05/2019 and has agreed to sell the suit schedule property in favour of plaintiff for a total consideration of Rs 6,00,000/- and on same day the defendant has received advance sale consideration amount of Rs. 5,00,000/- further she has agreed to receive the balance sale consideration amount of Rs. 1,00,000 at the time of execution of sale deed in favour of plaintiff?**

- 2. Whether the plaintiff further proves that she is always ready and willing to perform her part of contract ?**
- 3. Whether the plaintiff is entitle to the relief of specific performance of the contract?**
- 4. To what order or decree?**
- 5.** To prove the above said points, the GPA holder of the plaintiff has examined himself as PW1 and examined two witnesses as PW2 and PW3 and got marked 6 documents at Ex.P1 to P6. On the other hand defendant was placed exparte.
- 6.** My answer to the above said points are as follows : -

Point No.1 & 2	:	In the Affirmative
Point No.3	:	In the Affirmative
Point No.4	:	As per final order for the following

REASONS

- 7. Point No.1 and 2**:- Since these two points are inter connected with each other, to avoid repetition of facts and findings, both points are taken up together for consideration under common head.
- 8.** According to plaintiff, the defendant Smt. Madivarala Rudramma is the owner of the suit schedule property measuring 4 acres 26 cents in Sy.No. 165/A. To clear the hand loan and for the purpose of her legal necessity and family

benefit and family expenses the defendant has approached the plaintiff and offered to sell the suit schedule property measuring 4 acres 26 cents in favour of plaintiff for a total consideration amount of Rs.6,00,000- and she has executed a unregistered sale agreement dated: 23/05/2019 in favour of plaintiff and she has received advance sale consideration amount of Rs.5,00,000/- from the plaintiff in the presence of witnesses. The defendant has agreed to execute the register sale deed in favour of plaintiff within 3 months by receiving balance sale consideration amount and obtaining necessary documents pertaining to the suit schedule property. But the defendant has refused to receive the legal notice. Then also, on 10/6/2020 the plaintiff was waiting for defendant in the sub register office from 10.00 am to 5.00pm to get the register sale deed. But the defendant did not come forward to register the sale deed in favour of plaintiff. The plaintiff is /was always ready and wiling to perform her part of contract and also she is ready to pay the balance sale consideration amount of Rs. 1,00,000/- to the defendant and to get the register sale deed. Hence, the suit.

9. In order to prove the case of the plaintiff, the GPA holder of the plaintiff has examined himself as PW.1 and he reiterated the plaint averments in his chief- examination

affidavit. In support of his oral evidence he has produced documents which has been marked as Ex.P.1 to 6.

10. Ex.P1 is the GPA which executed by the plaintiff in favour of PW1. Ex.P2 is the original Sale agreement dated 23/5/2019 executed by the defendant in favour of plaintiff. On perusal Ex.P2 it appears that, the defendant had agreed to sale the suit schedule property in favour of plaintiff for total sale consideration amount of Rs. 6,00,000/-. Further it reveals that the defendant has received advance sale consideration amount of Rs. 5,00,000/- and she agreed to receive the balance sale consideration amount of Rs. 1,00,000/- at the time of execution of sale deed in favour of plaintiff. Ex.P2(a) to Ex.P2(d) are the signatures of the witnesses. Ex.P2(f) is the signature of the deed writer. Ex.P3 is the legal notice dated 27/05/2020 which discloses that, the plaintiff has issued legal notice through her counsel to the defendant stating that, she is ready and willing to perform her part of contract and to get registered sale deed in her favour by paying balance sale consideration amount of Rs. 1,00,000/- to the defendant. Ex.P4 is the postal receipt, Ex.P5 is the unserved RPAD cover, which discloses that the plaintiff has issued legal notice to the defendant through RPAD and defendant has refused to receive the said legal notice. Ex.P6 is the RTC in respect of

Sy.no. 165/A measuring 4 acres 26 guntas which stand in the name of defendants.

11. In support of her case the plaintiff has examined two witnesses as PW2 and PW3. PW2 and PW3 are the attesting witnesses to the sale agreement which is marked as Ex.P2. In the chief examination affidavits PW2 and PW3 have stated that they well known the plaintiff and defendant and they are the same villagers. Further they have stated that, the defendant had agreed to sell the suit schedule property in favour of plaintiff for total sale consideration amount of Rs.6,00,000/- and the defendant has executed sale agreement on 23/05/2019 in favour of plaintiff and on the same day she has received advance sale consideration amount of Rs.5,00,000/- in their presence and in the presence of other witnesses. Further the defendant has agreed to receive the balance sale consideration amount of Rs. 1,00,000/- from the plaintiff at the time of execution of registered sale deed. Further they identified their signature in Ex.P2. Signature of the PW2 and PW3 marked as Ex.P1(a) and Ex.P2(b).

12. On the other hand, as stated supra, inspite of service of summons, the defendant has not appeared before the court to challenge the plaintiff's case. Hence, the evidence of

PW.1 to PW.3 remained unchallenged and undisputed. The documents produced by plaintiff corroborated with the oral evidence of PW1 to PW3.

13. As per Section 16(c) of Specific Relief Act, “The readiness and willingness to perform must be pleaded and proved and said readiness and willingness must be from the date of agreement till filing of the suit is necessary”. Here in this case, the legal notice marked at Ex.P3 clearly goes to show that, the plaintiff is always ready and willing to perform his part of contract. Moreover, plaintiff has pleaded in the plaint that, she is always ready and willing to perform her part of contract and she is also willing to perform her part of contract and she is also ready to pay balance sale consideration amount of Rs. 1,00,000/- to the defendant and to get the register sale deed. Hence, as per material available on record, it is held that plaintiff has proved that defendant has executed an agreement of sale dated 23/05/2019 agreeing to sell the suit schedule property in her favour for a total sale consideration amount of Rs.6,00,000/ and out of which the defendant has received advance sale consideration amount of Rs.5,00,000/ and has agreed to receive the balance sale consideration amount of Rs.1,00,000/ at the time of registration of sale deed.

Further it is held that, the plaintiff has proved that, she is always ready and willing to perform her part of contract.

Hence, I answered points No.1 and 2 in the Affirmative.

14. POINT No.3:- In view of the above discussion, it is held that plaintiff is entitled to relief of specific performance of contract as prayed in the plaint. **Hence,I have answered point No.3 in the affirmative.**

15. POINT No.4:- In view of my foregoing discussions in point No.1 to 3, I proceed to pass the following :

ORDER

- **The suit of the plaintiff against the defendant for Specific performance of contract is hereby decreed with cost.**
- **The defendant is hereby directed to execute the registered sale deed in favour of the plaintiff within 2 months from the date of this judgment by receiving the remaining sale consideration amount of Rs.1,00,000/- from the plaintiff.**
- **In failure of which, the plaintiff is at liberty to take legal steps against the defendant in accordance with law.**
- **Draw decree accordingly.**

(Dictated to the Stenographer, in online computer, corrected, signed and then pronounced by me in the open court on this the 23rd July 2021)

**(BHARATHI.M.)
Senior Civil Judge & JMFC.,
Harapanahalli.**

ANNEXURES

WITNESSES EXAMINED FOR THE PLAINTIFFS:-

PW1:H.Nagarajappa

PW2: Ravigowdru

PW3: Rangappa

DOCUMENTS MARKED FOR THE PLAINTIFFS:-

Ex.P1 : GPA

Ex.P2 : Sale agreement

Ex.P2(a) to (f): Signatures

Ex.P3 : Legal notice

Ex.P4 : Acknowledgment

Ex.P5 :Postal cover

Ex.P6 : RTC

WITNESSES EXAMINED FOR THE DEFENDANTS:-NIL

DOCUMENTS MARKED FOR THE DEFENDANTS:-NIL

**(BHARATHI.M.)
Senior Civil Judge & J.M.F.C.,
Harapanahalli.**