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R.A. 19/2022

Presented on : 08-12-2021
Registered on : 11-08-2022
Decided on : 07-03-2026.
Duration : 04 Y, 02 M, 30 D.

IN THE COURT OF THE PRL. DISTRICT JUDGE
AT: YADGIR

DATED THIS THE **7th DAY OF MARCH 2026**

Present

Sri. Marulasiddaradhya H.J

B.A., LAW, LL.M,

Prl. District & Sessions Judge,
Yadgir

REGULAR APPEAL NO. 19/2022

Appellant/Defendant No.7:

Abilash S/o Ramesh Rao, Aged: 09 years
minor U/G of his mother by name Surekha
W/o Ramesh Rao, Aged about: 36 years,
Occ: Agriculture & Household, R/o:
Nasalwai, Tq: Gurumitkal, Dist: Yadgir.

(By Sri.G.R., Advocate)

// Versus //

Respondents/Defendants/Plaintiff:

- 1)** Diliprao S/o Kishtappa @ Kishtachari died
leaving behind his LR's by
 - A)** Jayashree W/o Late Diliprao, Aged:
52 years, Occ: Agriculture,



- B)** Deepti D/o Late Diliproa, Aged about: 27 years, Occ: Private Job, Both Nasalwai, Tq: Gurumitkal, Dist: Yadgiri.
- 2)** Ramesh S/o Narayanrao Kulkarni, Aged about: 42 years, Occ: Agriculture,
- 3)** Laxmikantrao S/o Narayanrao Kulkarni, Aged about: 65 years, Occ: Agriculture,
- 4)** Bhimshenrao S/o Narayanrao Kulkarni, Aged about: 45 years, Occ: Agriculture,
- 5)** Madhusudanrao S/o Seetaramrao, Aged about: 62 years, Occ: Agriculture,
- 6)** Sureshrao S/o Seetaramrao, Aged about: 54 years, Occ: Agriculture,
- 7)** Ashokrao S/o Seetaramrao, Aged about: 52 years, Occ: Agriculture, All are R/o: Nasalwai, Tq: Gurumitkal, Dist: Yadgiri.

(Placed exparte)

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J U D G M E N T

This appeal is filed by the plaintiff before the trial court against the judgment and decree passed in O.S.No.43/2016 dated 10.11.2021 on the file of Senior Civil Judge, Yadgiri.

2) For the sake of convenience, the parties to this appeal hereinafter will be referred to with their ranks assigned to them before the trial Court. In the trial Court, the present



appellant is plaintiff and respondent No.1 is the plaintiff and respondents No.2 to 7 are the defendants.

3) The brief facts as per contents of the plaint is that, the plaintiff and defendants No.1 to 6 are the close relatives and brothers to one and another. Defendant No.7 is the son of defendant No.1. The suit schedule property is jointly standing in the name of the defendants and they are in joint possession. Defendant No.1 agreed to sell the suit schedule property for his family necessity and execute a registered sale deed dated 15.06.2015 by receiving the entire sale consideration amount of Rs.9,60,000/-. The defendant No.1 as to got prepare 11-E sketch and agreed to execute sale deed within six months in terms of the agreement. Accordingly, after six months of the agreement period the plaintiff approached the defendant No.1, but he dragged the execution of sale deed for one or other reasons. Hence, the plaintiff issued legal notice dated 02.05.2017 inspite of notice neither he replied nor came forward to execution of sale deed. The plaintiff is ready and willing to performance of his part of



contract. Hence, instituting the suit for specific performance of contract.

4) After service of suit summons the defendants appeared through their counsel and have entered into compromise by filing petition Under Order 23 Rule 3 of CPC. In view of objection by the court about absence of other parties to the agreement in the compromise petition, the defendants No.2 to 6 are impleaded and subsequently defendant No.7 also came on record. In the mean time defendant No.1 died and his LRs brought on record.

5) The defendant No.3 has filed written statement by admitting the relationship and denying the complete averments of the plaint as false. He specifically contended that the contents of the agreement are not read to them and the plaintiff executed the agreement by playing fraud and misrepresentation. The defendant No.1 has not received any amount and they are not in need of any money. He has not sold the suit schedule property to the plaintiff. The defendant No.1 has no authority to sell the suit schedule property and



plaintiff is not ready and willing to perform his part of the contract. Further that suit of the plaintiff is barred by limitation.

6) Further the defendant No.7 has also filed separate written statement and also sought for counter claim. He specifically denied the averments of the plaint as false and contented that defendant No.1 has not competent to sell the suit schedule property. The same is the joint family property purchased out of joint family fund. He also made counter claim that one Srinivasrao was the father of Narayanarao, the defendants are in joint possession and enjoyment of suit property and no partition effected. The defendant No.7 has 1/3rd share in the suit property. The defendants after the death of Srinivasrao got entered their names in the revenue records of suit property. The agreement to sell is not legal and execution for family necessity. Hence, he prays to dismiss the suit with cost.

7) Based on the pleading of both parties, the learned trial judge has framed the following issues;

**ISSUES**

- 1) Whether the plaintiffs prove that defendants have agreed to sell the suit properties in favour deceased plaintiff and executed registered agreement of sale dated 15.06.2015?
- 2) Whether the plaintiffs prove that defendants have received the entire sale consideration amount of Rs.9,60,000/- and agreed to execute registered sale deed within six months?
- 3) Whether the plaintiffs further prove that, they are ever ready and willing to perform their part of contract?
- 4) Whether the defendants prove that agreement of sale is out come of misrepresentation and fraud?
- 5) Whether defendant No.7 proves that the suit schedule properties are ancestral and joint family properties and they are in joint possession and enjoyment of the suit properties?
- 6) Whether the defendant No.7 proves that he is having 1/3rd share in the suit schedule properties?



- 7) Whether the plaintiffs are entitled to the relief as sought for?
- 8) Whether the defendant No.7 is entitled for the relief as sought in the counter claim?
- 9) What order or decree?

8) The plaintiff No.1(a) in support of the plaint averments examined himself as PW.1 and got marked 7 exhibits, while the defendant No.3 and defendant No.7 through his minor guardian examined as DW.1 and DW.2 and also got marked 7 exhibits.

9) The learned trial judge after hearing both sides and perusing the records by affirmatively answering issue No.1 to 3 and 7 and by negatively answering issue No.4 to 6 and 8 decreed the suit of the plaintiff and dismissed the counter claim of defendant No.7.

10) The defendant No.7 being aggrieved by the impugned judgment of the learned trial judge preferred this appeal on the grounds that trial court has not applies its judicious mind to the oral evidence led by the parties and also the documents produced by them. It has not considered



admitted fact about the nature of suit schedule property as joint family property which remain undivided among the parties. When the defendant No.1 has not been with any share in the suit schedule property he cannot execute a agreement like Ex.P.1. Defendant No.7 is the interested co-sharer in the suit property being the son of defendant No.1. Hence, he prayed to allow the appeal by set-aside the impugned judgment and decree.

11) This court after service of notice, secured records from the trial court and inspite of service of notice to respondents No.2 to 5 and 7 remain absent. The suit against respondent No.6 remain abated. Due to the absence of steps taken by the appellant, even this court has dismissed the suit against respondent No.1(a) & (b) have not taken steps by the appellant.

12) The learned counsel for the appellant filed written arguments.

13) The arguments of the respondents taken nil, in view of non appearance.



14) This court perused the grounds of appeal and records of the trial court, the following points arises for my consideration;

15) The following points arises for my consideration;

- 1)** Whether the plaintiffs proved that the defendant No.1 has agreed to sell the suit schedule property by executing the registered agreement dated 15.06.2015 by receiving the entire sale consideration amount of Rs.9,60,000/-?
- 2)** Whether the plaintiffs proved that they are ready and willing to perform their part of contract on the date of instituting this suit?
- 3)** Whether the defendant No.7 proved that suit schedule property is his ancestral and joint family property in joint possession and enjoyment of himself and defendant No.1?
- 4)** Whether the defendant No.7 proved his counter claim and has 1/3rd share in suit schedule property?
- 5)** Whether the judgment of the trial court is justifiable?
- 6)** Whether the findings of the trial called for interference?
- 7)** What order?



16) My findings all 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 : In the **Negative.**
- Point No.5 : In the **Affirmative.**
- Point No.6 : In the **Negative.**
- Point No.7 : As per final order,
for the following;

REASONS

17) Point No.1: It is the case of the plaintiff that the defendants have to sell the suit schedule property by executing registered agreement dated 15.06.2015 and received entire sale consideration amount of Rs.9,60,000/-.

18) The plaintiff in support of their case and pleadings plaintiff No.1 (a) examined himself as PW.1 and reiterated the plaint averments. They also got marked 7 exhibits.

19) Ex.P.1 is the registered agreement to sell dated 15.06.2015 receiving actual execution of the agreement by the defendant No.1 by receiving entire sale consideration amount related to suit schedule property. Even as per Ex.P.2 on 25.07.2016 the deceased plaintiff issued legal notice to the defendant No.1 and the same have been received as per



Ex.P.3 acknowledgment. Ex.P.4 is the RTC related to Sy.No.132 reveal the land is standing in the name of defendants No.1 to 6 while Ex.P.5 RTC related to Sy.No.133 also reveal property standing in the name of defendants No.1 to 6. Ex.P.6 is the compromise petition in R.A.No.1/2010 reveal that father of defendant No.1 by name Narayanrao being the appellant got allotted half share in Sy.No.131, 132 & 133 of Nasalwai village, Yadgiri Taluka as per the sketch enclosed it.

20) The defendant No.7 is the contesting party who is the son of defendant No.1 claiming his 1/7th share himself is the only appellant who denied the judgment and decree of the learned trial court. It is material to note that he appeared as contesting defendant and appellant in this case as minor through her mother natural guardian who is also none other than wife of defendant No.1.

21) The defendant No.3 in support of the written statement averments examined as DW.1 while natural guardian of defendant No.7 who is also none other than wife



of defendant No.1 examined as DW.2. They have also produced 7 exhibits.

22) Ex.D.6 & Ex.D.7 mutation registers with M.R.No.H28 & H12 reveal that based on compromise decree the names of father of defendants No.1 to 6 mutated in revenue records. After the death the name of these defendants is mutated thereby it is clear that defendants No.1 to 6 are the joint owners of suit schedule property.

23) The contents of Ex.P.1 registered agreement to sell also clearly reveal that defendants No.1 to 6 have together executed register agreement to sell in presence of witnesses in the office of Sub-Registrar and the same is also have been drafted by the Advocate Yadgiri. Their appears knowledge and consent of the defendants to execute registered agreement in favour of deceased plaintiff. Even they have also received entire sale consideration amount from the late plaintiff.

24) The defendants in their respective evidence while examining themselves as DW.1 and DW.2 admitted in the cross examination that they have only executed registered



agreement in favour of the late plaintiff. Even though they categorically denied payment of sale consideration amount they have not produced any documents to show the nonpayment against the terms of registered agreement to sell marked as Ex.P.1.

25) Even it is material to note that the defendant No.7 minor and son of defendant No.1 preferred this appeal through her natural guardian mother by denying the said alienation made by his father to the extent of his share. When all the surviving appears i.e., defendants No.1 o 6 jointly agreed to execute registered agreement the presumptive value adjudicate to registered document about the execution cannot be denied to support the claim of the plaintiff.

26) The above analysis on oral and document evidence makes it clearly that the plaintiff have proved that defendants No.1 o 6 have executed registered agreement to sell in his favour by agreeing to sell the suit schedule property and receiving the entire sale consideration amount of Rs.9,60,000/-. Accordingly, I answer Point No.1 in the **Affirmative.**



27) Point No.2: Plaintiff has also contended that the deceased plaintiff and his LRs on record are ever ready to willing to get execute registered sale deed from defendants No.1 to 6 in accordance with terms of registered agreement to sell.

28) The plaintiff in support of their pleadings to establish they are ready and willingness, they have produced Ex.P.2 legal notice issued to the defendants expressing their ready and willingness, but not execute the sale deed. In support of service of notice the defendants remain silent and they have not denied the contents of the notice as false. Even the said notice has also been served as per Ex.P.3 postal acknowledgment.

29) Further the contents of Ex.P.4 and Ex.P.5 RTCs clearly reveal ownership and possession of defendants No.1 to 6 as on the date of agreement and also on the date of instituting this suit to seek the relief of specific performance by the plaintiff.

30) Further as per the terms of Ex.P.6 decree drawn in R.A.No.1/2010 the defendants No.1 to 6 are the joint owners



through their father as on the date of agreement and also on the date of instituting this suit.

31) Even the contents of Ex.P.1 register agreement reveal that the plaintiff has paid and the defendants have received entire sale consideration amount of Rs.9,60,000/-. Consequently, nothing left with the plaintiff to perform his part of contract in terms of Ex.P.1, but not executed the sale deed inspite of fulfilling statutory requirement U/Sec.16(c)(ii) of Specific Relief Act, 1963. Accordingly, it is proved that plaintiff is ever ready and willing to perform his part of the contract. Hence, I answer Point No.2 in the **Affirmative**.

32) Point No.3 & 4: These two points are interlinked with each other, hence to avoid the repetition of facts I took these points together for common discussion.

33) It is the case of the defendant No.7 as per the counter claim made in the written statement that the suit schedule property are ancestral and joint family property and they are in joint possession and enjoyment on the date of



agreement and on the date of instituting the suit and hence, he claimed 1/3rd share in both the properties.

34) In support of his pleadings the defendant No.7 being the minor got examined himself through his mother who is also wife of defendant No.1 and she reiterated the written statement averments and counter claim as DW.2. Even he has got marked 7 exhibits. Among them Ex.D.7 & Ex.D.8 M.R. entries disclose that based on compromise decree the names of defendant's father entered in revenue records and after their death names of these defendants are mutated. Hence, it is clear that the suit schedule properties are joint family properties of defendants No.1 to 6.

35) However it is material to note that being the joint owners in possession of both the items of suit schedule properties defendants No.1 to 6 have executed registered agreement to sell in favour of the plaintiff by receiving the entire sale consideration amount.

36) These defendants knowing the legal consequences appear to have included son of defendant No.1



as defendant No.7 under the impleading application and contesting the case to the extent of his 1/3rd share in both the suit schedule properties.

37) Further it is to be noted that all the defendants together have executed registered agreement and have received entire sale consideration amount from the plaintiff. They have claimed execution of the said agreement is for legal necessity and for their family maintenance.

38) The intention of contesting the case against the plaintiff by the defendant No.7 as minor through her mother as natural guardian clearly reveal conduct of the defendant No.1 to deny enforceable right of the plaintiff in terms of Ex.P.1 registered agreement inspite of receiving the entire sale consideration amount. The defendants on extent cannot deny right of the plaintiff over the suit schedule properties in accordance with the terms of Ex.P.1 agreement through the son of defendant No.1 without any basis only on the ground that share of the minor is also included in the said joint family property.



39) The defendants No.1 to 6 being the siblings and plaintiff relatives themselves agreed in sound mind to sell suit schedule properties for valuable consideration to the plaintiff. Subsequent denial by the them through defendant No.7 if permitted would result in denying the just right of the plaintiff to get enforceable his relief for specific performance of contract provided under the provisions of Specific Relief Act.

40) Further it is material to note that the plaintiff has proved execution of agreement to sell by defendants No.1 to 6 related to the suit schedule properties only after receiving the entire sale consideration amount and also proved his ready and willingness to perform his part of the contract.

41) Consequently, inspite of defendant No.7 establishing the fact that, suit schedule properties are joint family properties, he is not entitled for any share as claimed by him in either of the items of the suit schedule properties. Hence, I answer Point No.3 in the **Affirmative** and Point No.4 in the **Negative**.



42) Point No.5 & 6: These two points are interlinked with each other, hence to avoid the repetition of facts I took these points together for common discussion.

43) The appellant being the defendant No.7 before the learned trial court preferred this appeal against the decree for specific performance of contract with specific contention that the learned judge has not applied its judicious mind either of the oral or documentary evidence. Further that even though the suit schedule properties are joint family properties his undivided share is not allotted him. The defendants were not served with notice in compliance of the provisions of specific relief act. The defendant No.7 is the co-parcener himself be given share in the suit schedule properties.

44) In this regard the learned trial judge has properly appreciated oral evidence of PW.1, DW.1 & DW.2 along with Ex.P.1 to Ex.P.7 and Ex.D.1 to Ex.D.7 with specific reference to the contents of the documents and logically concluded that in spite of proving the suit schedule properties as joint family properties the defendant No.7 cannot claim any right over the suit schedule properties.



45) The defendant No.7 in spite of making counter claim in his written statement failed to produce any evidence to establish non-execution agreement to sell as per Ex.P.1 by defendant No.1 to 6 related to the suit schedule properties and even he has also not adduced evidence to support that the fact the said agreement has not been executed for any legal necessity by defendants No.1 to 6.

46) The defendant No.7/appellant being the minor boy appeared through her mother prima facie appears to has impleaded subsequently for technical reason to prevent the plaintiff to enjoy his right for specific performance in accordance with a contents of agreement to sell.

47) Accordingly, the learned trial judge after appreciation on oral and documentary evidence on record by its justifiable findings to all the issues framed by it properly concluded the suit by decreeing the same with costs by dismissing the counter claim of defendant No.7.

48) Nowhere the findings of the learned trial judge appears to be illegal and called for interference by this Court.



Hence, I answer Point No.5 in the **Affirmative** and Point No.6 in the **Negative**.

49) Point No.7:- In the result, I proceed to pass the following:

ORDER

The appeal preferred under Order 41 Rule 1 & 2 R/w Sec.96 of CPC is hereby dismissed with cost.

The Judgment and Decree passed by the learned Senior Civil Judge, Yadgiri on O.S.No.43/2016 dated 10.11.2021 is hereby confirmed.

Draw decree accordingly.

Sent back TCR with a copy of this judgment.

(Dictated to the Stenographer Grade-III transcribed, typed by him on computer, script corrected, signed and then pronounced by me in the open court dated this the **7th day of March 2026**).

(Marulasiddaradhya H.J)

Prl. District Judge,
Yadgir.