

IN THE COURT OF ADDL CIVIL JUDGE, JMFC , AT YADGIRI.

PRESENT : SMT SMITHA MALAGANVE

**B.A,LL.B
ADDL. CIVIL JUDGE, YADGIRI.**

ORIGINAL SUIT No. 192/2018

Dated on this 18th day of December - 2019

PLAINTIFF: M.V.S. Suryanarayanaraju S/o Sambashivaraju,
Age: 64 years, Occ: Agriculture,
R/o Bhimnalli village, Tq: & Dist: Yadgiri.

(By Sri. C.S.M.P. Advocate)

Vs.

DEFENDANT: Yamanappa S/o Haleppa, Age:42 years,
Occ: Agriculture, R/o Bhimanalli village,
Tq:& Dist: Yadgiri.

(Defendant placed Ex-parte)

Date of Institution of suit	: 31-07-2018
Nature of the suit	: Suit for specific performance of contract
Date of commencement of recording of the evidence	: 22-06-2019
Date on which the Judgment pronounced	:18-12-2019
Total Duration	: Day Months Year 18 04 01

**Addl. Civil Judge & J.M.F.C.
YADGIRI.**

J U D G M E N T

The plaintiff has filed the present suit against defendant for the relief of specific performance of contract.

2.The brief facts of the case of the plaintiff are as under:

The defendant is the owner and possessor of the suit land bearing Sy.No.48 measuring 06 acre 18 guntas. Out of it to the extent of 03 acres 00 guntas situated at Bhimanalli village,Tq & Dist: Yadgir is the suit schedule property. Due to the family and legal necessity, the defendant agreed to sell the suit land to the plaintiff for

valid consideration amount of Rs.4,90,00/- as per registered agreement of sale bearing document No.3698/2012-13, dtd:19-12-2012 in presence of witnesses by name Gopalraj S/o Bharathraju R/o Bhimnalli and Veerupangouda S/o Hanmanthraya R/o Belagundi. The plaintiff has paid Rs. 3,00,000/- as advance amount to the defendant on that day as part performance of contract and agreed to pay remaining consideration amount to defendant after 06 months from the date of execution of said agreement of sale and defendant has agreed to execute the sale deed after receipt of remaining consideration amount after getting prepared required document. As per said agreement defendant has taken steps for surveying the suit land with consent of plaintiff, by moving application before revenue authorities, when survey proceedings are under process mean while the brother of defendant by the name Chidanand filed suit against defendant before this Hon'ble for partition and separate possession which was numbered as O.S.No.241/2013. In that suit the defendant was placed as exparte. In that case the plaintiff was impleaded as defendant No.2 which was allowed by the court and plaintiff of present case contested the said case by filing written statement. The said suit was dismissed for non-prosecution. After dismissal of said suit, the defendant has not taken any interest to complete the sale transaction by receiving remaining consideration of Rs. 1,90,000/- from plaintiff. Many times the plaintiff approached the defendant for execution of registered sale deed, but without any valid reasons the defendant has not executed the registered sale deed in his favour by receiving remaining consideration amount and finally requested on 25-06-2018 and the defendant avoiding to execute the sale deed in

respect of suit land. The plaintiff is ready and willing to pay remaining consideration amount and the defendant under obligation to execute the sale deed in his favour. Accordingly the plaintiff has issued a legal notice to the defendant through his counsel on 28-06-2018 asking him to execute the valid sale deed in his favour. However the postal authorities have returned the postal cover of notice with endorsement, that the defendant is out of station on 16-07-2018 and the defendant intentionally avoiding to receive the said notice, so which amounts to proper service on the defendant. The above facts constitute the cause of action for filling this suit by the plaintiff against the defendant on 25-07-2018 and immediate cause of action arose on 16-07-2018, when the defendant is intentionally avoid receiving the notice and not executed any sale deed in the stipulated period. Therefore prayed to decree the suit.

3. In spite of service of summons the defendant failed to appear before the court. Hence he was placed ex-parte.

4. Based on the above pleadings of the plaintiff, the following points arise for my consideration:

POINTS

- 1) *Whether the plaintiff proves that defendant has executed sale agreement dated:19-12-2012 in his favour by receiving advance sum of Rs.3,00,000 /-?*

- 2) *Whether the plaintiff further proves that he is ever ready and willing to perform his part of contract?*
- 3) *Whether the plaintiff entitled to a decree of specific performance, as sought for?*
- 4) *What order or decree?*

5. The plaintiff in order to prove his case has got examined himself as P.W-1 and got marked Ex.P.1 to 9 and also got examined another witness on his behalf as P.W-2.

6. Heard the arguments of learned counsel for the plaintiff Perused pleadings, oral and documentary evidence on record.

7. On careful examination of available materials on record, the above points are answered as under:

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

REASONS

8. Point No. 1 and 2:

Since these points are inter-linked and inter-connected with each other, they are taken together for discussion in order to avoid the repetition of discussion.

9. The case of plaintiff is that the defendant is the owner and possessor of the suit land bearing Sy.No.48 totally measuring 06 acre 18 guntas situated at Bhimanalli village, Tq & Dist: Yadgir. On 19-12-2012 out of it the defendant agreed to sell to the plaintiff to the extent of 03 acres 00 guntas, for valid consideration amount of Rs.4,90,000/- due to his family and legal necessity. The defendant has received amount of Rs.3,00,000/- as part consideration amount from the plaintiff in presence of witnesses by name Gopalraj S/o Bharathraju R/o Bhimnalli and Veerupangouda S/o Hanmanthraya R/o Belagundi. The defendant agreed to receive remaining consideration amount of Rs.1,90,000/- at the time of execution of sale deed, whenever called to do so.

10. The plaintiff in order to prove his case has got examined himself as P.W-1. He reiterated the averments of the plaint in his chief examination affidavit. In support of his oral evidence, he has got marked Ex.P-1 to 9. Ex.P-9 is the original sale deed and Ex.P-1 is the attested copy of the Ex.P-9. On perusal of the same it is found that on 19.11.2012 the defendant has executed the registered sale

agreement in favour of the plaintiff, wherein it is mentioned that in the property bearing Sy.No. 48, out of 06 Acres 18 guntas the defendant has agreed to sell suit land measuring 03 acre 31 guntas, for total sale consideration amount of Rs 4,90,000/-. On the same day the defendant received Rs.3,00,000/- as advance amount and agreed to execute the sale deed by receiving remaining amount of Rs. 1,90,000/- which has to be paid by plaintiff within 6 months from the date of execution of the sale deed. Ex.P.2 is the legal notice. Ex.P-3 is the postal receipt. Ex.P-4 is the postal cover. On perusal of Ex.P-2 to 4 it can be observed that the plaintiff has issued the legal notice to the defendant on 28-06-2018 calling upon him to execute the registered the sale deed in favour of the plaintiff by receiving balance amount. But the same was returned as unserved with an endorsement that the defendant is out of station. Ex.P-5 is the RTC with respect to Sy.No. 48. On perusal of the same it can be observed that the total extent of the said land is 06 acre 18 guntas. The land was mutated in the name of defendant through M.R.No 17/30-9-96 by partition.

11. Ex.P.6 is the order sheet of O.S.No. 241-2013. On perusal of the same it is found that the said suit was dismissed for non prosecution. Ex.P-7 is the plaint copy of O.S.No.241/13, wherein one Chidanand S/o Halleppa has filed suit against the plaintiff and defendant of the present case, for the relief of partition and separate possession. Ex.P-8 is the written statement filed by the plaintiff of the present case. On perusal of Ex.P-6 to 8 which are the documents of O.S. 241/13 it is found that the brother of the defendant of this case

by name Chidanand has filed suit against defendant for partition and separate possession, wherein he was placed Ex-parte. The defendant No.2 who is the plaintiff in the present case was impleaded as defendant No.2 in O.S.No.241/13. On 06-12-2016 the suit was dismissed for non prosecution as the plaintiff failed to lead his evidence. In that suit said Chidanand has prayed for partition by allotting half share in Sy.No. 48 and the suit was dismissed for non prosecution.

12. The plaintiff in order to prove his case examined one more witness as P.W-2. P.W-2 is the one of the attesting witness to the Ex.P-1. In his chief examination he reiterated the plaint averments and stated that he is one of the attesting witness to the Ex.P-1 which was executed by the plaintiff in favour of the defendant. The sale talks were held in his presence. P.W-2 has identified his signature and also the signature of the defendant on Ex.P1.

13. The plaintiff has filed the present case for specific performance of contract alleging that the defendant had agreed to sell the suit land i.e. Sy.No.48 to the extent of 03 acres on 19-12-2012 for consideration amount of Rs. 490,000/- and out of it the plaintiff has paid Rs. 3,00,000/- to the defendant on the date of execution of Ex.P-9. Ex.P-9 is the registered sale agreement. On perusal of the same it is found that on 19-11-2012 the defendant has agreed to sell the suit land to the plaintiff for his family and legal necessity for the consideration amount of Rs. 4,90,000/-. On that day the plaintiff has paid 3,00,000/- to the defendant as advance consideration amount. It

was also agreed between the parties that the remaining balance amount of Rs. 1,90,000/- will be paid by the plaintiff within 06 months from the date of execution of Ex.P-9 and after receipt of the balance amount the defendant had to execute the registered sale deed and to deliver the possession of the property to the plaintiff. In the mean while the brother of the defendant has filed a suit against defendant on 06-09-2013 seeking his half share through partition in the land bearing Sy.No 48. During the pendency of the suit the plaintiff of the present case has filed application to implead him as defendant No.2. Accordingly he was impleaded as defendant No.2. Later on the case was dismissed for non prosecution on 06-12-2016. On 28-06-2018 the plaintiff has issued legal notice to the defendant calling upon him to execute the register sale deed by receiving the balance amount. Therefore on perusal of all the materials on record it is found that the plaintiff was always ready and willing to perform his part of contract.

14. On over all appreciation of evidence of plaintiff as well as P.W-2 and also documentary evidence, in the view of discussion as made above, it is clear that the plaintiff has sufficiently proved to the satisfaction of this court that the defendant has executed an agreement of sale dtd: 19-12-2012 in respect of suit property for a sum of 4,90,000/- in favour of the plaintiff by receiving advance amount of Rs. 3,00,000/- as per Ex.P.1. Ex.P-1 or Ex.P-9 is the registered document. Hence presumption arises with respect to its execution. As per the discussion made above it is also clear that, the plaintiff was always ready and willing to perform his part of contract.

Accordingly point No.1 and 2 are answered in the “**Affirmative**”.

15. Point No.3: In view of the above discussions this court has come to the conclusion that, as the plaintiff has sufficiently proved the execution of the document and his ready and willingness to perform his part of contract, point No.3 answered in the “**Affirmative**”.

16. Point No.4: In view of above discussions, it just and proper to pass the following:

ORDER

Suit of the plaintiffs is hereby decreed with costs.

The defendants are hereby directed to receive the balance sale consideration amount of Rs. 1,90,000/- and execute the registered sale deed in respect of suit property in favour of the plaintiff within three months from the date of decree.

Draw decree accordingly.

(Dictated to the Typist typed by her, the same is corrected, signed and then pronounced by me in the open court, the th day of September- 2019).

(SMITHA MALAGANVE)
ADDL. CIVL JUDGE & JMFC.,
YADGIRI.

A N N E X U R E S

List of witnesses examined for plaintiffs side:-

PW.1 : M.V.S. Suryanaranaraju S/o Sambashivaraju

PW.2 : Veerupannagouda S/o Hanamanthraya

List of Exhibited documents marked for plaintiffs side:-

Ex.P.1 : CC of Agreement of sale
Ex.P.2 : Legal notice
Ex.P.3 : Postal receipt
Ex.P.4 : Postal acknowledgment
Ex.P.5 : RTC extract
Ex.P.6 : Copy of order sheet of OS.No.241/13
Ex.P.7 : Plaint copy of OS.No.241/13
Ex.P.8 : Written statement of OS.No.241/13
Ex.P.9 : Original Agreement of sale

List of witnesses examined on behalf of the defendants :

- Nil-

List of exhibits marked on behalf of the defendants :

- Nil-

**Addl. Civil Judge & J.M.F.C.
YADGIRI.**

**(Judgment pronounced in the open
court, vide separately)**

O R D E R

*Suit of the plaintiffs is hereby decreed
with costs.*

*The defendants are hereby directed to
receive the balance sale consideration amount
of Rs. 1,90,000/- and execute the registered sale
deed in respect of suit property in favour of the
plaintiff within three months from the date of
decree.*

Draw decree accordingly.

Addl. Civil Judge & J.M.F.C.
YADGIRI.