

KAYG210000432026



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

Present: **Smt.Hema Pastapur, B.A., LL.B.**
Senior Civil Judge and JMFC,
Shahapur.

R.A. No.07/2026

Dated this 15th day of July -2026

**Appellant/
Defendant:-**

Dasharadhi Chowdary S/o Doraswamy
Naidu Gottipati, Age: 50 years, Occ:
Agriculture, R/o Naikal Village, Tq:
Wadagera, Dist: Yadgiri. Presently
residing at H.No.B1-102, Shree Prakriti,
Vidyaranyapura, Bangalore North.

(By Sri. S.R.C. Advocate)

Versus.

**Respondents/
Plaintiffs
No.1 to 4:-**

1. Gurubasamma W/o Channappa @
Chennareddy, Age: 62 years, Occ:
Household.
2. Siddalingareddy S/o Channappa @
Chennareddy, Age: 27 years, Occ:
Agriculture.

3. Sumangala D/o Channappa @
Chennareddy, Age: 25 years, Occ:
Household.

4 Amaresh S/o Channappa @
Chennareddy, Age: 23 years, Occ:
Agriculture.

All are R/o: Village Gulsaram, Tq:
Wadgera, Dist: Yadgiri.

(By Sri. R.H.K. Advocate)

Date and nature of : Judgment and Decree passed in
decree appealed O.S.No.266/2020 dated: 01.12.2025
by the Addl. Civil Judge and JMFC,
Shahapur.

Date of institution : 22.12.2025
of the Appeal

Date of disposal : 15.07.2026

Total duration	Year/s	Month/s	Day/s
	--	06	23

JUDGMENT

That, the Appellant- Defendant in
O.S.No.266/2020 on the file of the Addl. Civil Judge
and JMFC, Shahapur, has preferred this Appeal under
Order XLI Rule 1 of the Code of Civil Procedure,

against the impugned Judgment dated:- 01.12.2025.
That, the respondents are the plaintiffs therein. That,
for the sake of convenience, the parties in this Appeal
are referred by their ranks as assigned in the trial
Court.

Suit schedule property is as under :-

Land bearing Sy.No.158
measuring 03 acres 08 guntas,
situated at Gulsaram village,
bounded by:-

East : Land of Siddanagowda
West : Land of Jallagouda
North : Land of Sabanna
South : Shahapur to Yadgir main
road.

Factual matrix of the case are as under :-

1. That, one deceased Shri Chennappa @
Chennareddy S/o Siddalingareddy was the husband of
the plaintiff No.1. That, the said Chennappa @
Chennareddy without any right and title over the suit
property and without the consent of the plaintiffs on

05.06.2004 had executed infavour of the defendant the Agreement of sale without possession document bearing No.781/2004-05 and received from him a sum of Rs.55,000/- as an earnest money.

2. That, the defendant is never in possession of the suit land since the day of execution of said document. That, the plaintiffs on 06.02.2019 and 15.03.2019 have got issued the legal notice to the defendant to cancel the said document which is time barred but, the said notice was returned with the shara as addressee out of the station. Hence, the plaintiffs have knocked the doors of justice.

3. That, on suit summons being served, the defendant appeared before the trial Court through his learned counsel and submitted his written statement, wherein he admitted that the said Channappa @ Channareddy had executed in his favour the said agreement of sale with possession and he died on 09.09.2017 and denied rest of plaint averments.

4. That, the defendant has further pleaded that the said Channappa @ Channareddy had agreed to sell the suit property to him for a valuable sale consideration of Rs.1,10,000/- and executed in his favour the registered Agreement of sale with possession document bearing No.781/2004-05 dated:- 05.06.2004 and received from him a sum of Rs.55,000/- as an earnest money and handed over him the possession of the suit land.

5. That, the defendant has further traversed that on several occasions he requested the said Channappa @ Channareddy for executing in his favour by receiving the balance sale consideration amount, stamp duty and registration charges but, he went on dogging the matter on one or other reason upto 2016 and when in the year he asked him for executing the said document then he assured for executing the same after recovering from his ill health.

6. That, the defendant has further averred that the said Channappa @ Channareddy died on 09.09.2017 and after his death when he asked the plaintiffs for executing the sale deed in his favour they sought the time and when in the 01st week of November 2018 he asked the plaintiffs for executing the said document again they have sought the time and lateron, have filed the false suit. That, the defendant has further pleaded that the suit is barred by limitation and the Court fee paid by the plaintiffs is not sufficient. That, the defendant in view of his aforesaid contentions has prayed for dismissing the suit with cost.

7. That, on the basis of the pleadings of both the parties, the following issues were struck :-

1. Whether the plaintiffs prove that, agreement of sale deed bearing No.781/2004-05 dated 05.06.2004 is null and void and binding on them?

2. Whether the plaintiffs prove the alleged interference by the defendant over suit property?
3. Whether the suit is maintainable?
4. Whether the plaintiffs are entitled for the reliefs as sought for ?
5. What order or decree ?

8. That, the plaintiffs to demonstrate their aforesaid contentions have got examined the plaintiff No.1 as PW1 and have got marked the documents at Exs.P1 to 7 and lateron have got discarded her evidence. That, the plaintiffs have got examined the plaintiff No.4 as PW2 and have got marked the documents at Exs.P1 to 7. That, the plaintiffs to strengthen their said contentions have got examined one Shri Sidramareddy S/o Sugareddy as PW3 and closed their side.

That, the defendant to probabalise his aforesaid contentions has deposed himself as DW1 and got

marked the documents at Exs.D1 to 31. That, the defendant to establish his case has got examined one Shri Basavarajappa S/o Siddappa as DW2 and closed his side.

9. That, the trial Court considering the materials placed on record, on 01.12.2025 has decreed the suit with costs. That, the defendant feeling aggrieved with the said Judgment and Decree, has preferred this Appeal on the following grounds that:-

- i. the Judgment and Decree passed by the trial Court is erroneous and against the law.
- ii. the issues framed by the trial Court are not in accordance with the pleadings.
- iii. the plaintiffs have not sought the reliefs of declaration of title and possession. Hence, the suit is not maintainable.
- iv. the findings given by the trial Court on issue No.1 is not correct and without pleadings such issue cannot be framed.

- v. from the date of execution of agreement of sale till today the defendant is in possession of the suit property and his name is appearing in column No.11 of the ROR. Hence, the findings given by the trial Court on issue No.2 is not correct.
- vi. the findings given by the trial Court on issues No.4 and 5 are not correct. That, the trial Court has not appreciated the oral and documentary evidence adduced by the parties. That, the Hon'ble High Court of Karnataka had clearly held that a person who is not in possession he cannot ask reliefs of declaration of title and injunction but he should seek the reliefs of declaration and possession. Hence, the decree passed by the trial Court is not sustainable.
- vii. the defendant had instituted the suit in O.S. No.74/2023 for Specific performance of contract and Injunction in respect of suit land, an issue

framed by the trial Court as Whether the plaintiff proves the defendant has executed the registered agreement of sale on 05.06.2004 with possession of the suit land? And the Court answered this issue in the affirmative. It means that, the defendant is in lawful possession of the suit property since 05.06.2004. That, this aspect has not been considered by the trial Court. Hence, the said Judgment and Decree is liable to be set aside.

10. That, in this Appeal the plaintiffs have appeared through their learned counsel. That, TCR has secured.

11. That, I have heard the arguments and perused the materials placed on record. That, the following points arise for My consideration and determination:-

1. Whether the Judgment and Decree passed by the trial Court is perverse and requires interference of this Court ?
2. What order or decree ?

12. That, on careful re-evaluation of the materials placed on record, My answer to the aforesaid points are as under:-

Point No.1 :- In the **NEGATIVE**

Point No.2 :- As per the final order
for the following :-

REASONS

13. Point No.1:- That, as I have already narrated the facts of the case without reproducing the same again, I would like to find out whether there is any substance in the grievance vendicted by the defendant.

14. That, in this Appeal the defendant has placed his reliance on the following decisions:-

1. Civil Appeal No.6640/2010

Hemalatha (D) by Lrs.

-VS-

Tukaram (D) by Lrs. and ors.

Wherein it has held that,

***Registered sale deeds carry a
strong presumption of validity and***

genuineness. They should not be lightly declared as sham documents unless cogent evidence and material particulars are provided to demonstrate the documents invalidity.

2. Civil Appeal No.8446/2024

Usha Devi and ors.

-VS-

Rama Kumar Singh and ors.

Wherein it has held that,

Limitation under Article 54 of Limitation Act, 1963 for initiating suit for specific performance of contract would be three years from the date fixed for performance.

3. Civil Appeal No.5342/2023

Valliammai

-VS-

K. P. Murali and others

Wherein it has held that,

***Specific performance of contract –
Limitation for filing suit – A promise
will not extend time for performance
of contract.***

15. That, the plaintiffs have placed their reliance on the following decisions :-

1. R.F.A. No.1701/2024

Sri. T.S. Channegowda

-VS-

Sri. H. Thopaiah

***Wherein it has held that,
jurisdiction could be exercised only
when the plaintiff, who has come to
the Court overs in plaint that he is
ready and willing to perform his
part of contract and then prove the
said averment, by acceptable
evidence. It is only then, the Court***

gets the jurisdiction to pass a decree for specific performance.

2. AIR 1997 Supreme Court 1751

K.S. Vidyanadam and ors.

-VS-

Vairavan

Wherein in para No.14 it has held that,

Sri Sivasubramaniam then relied upon the decision in Dr. Jiwan Lai and Ors. v. Brij Mohan Mehra and Anr. [1973] 2SCR230 to show that the delay of two years is not a ground to deny specific performance. But a perusal of the judgment shows that there were good reasons for the plaintiff to wait in that case because of the pendency of an appeal against the

order of requisition of the suit property. We may reiterate that the true principle is the one stated by the Constitution Bench in Chand Rani Even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property.

3. Civil Appeal No.4703/2022

***U.N. Krishnamurthy (since
deceased) Thr, Lrs.***

-VS-

A.M. Krishnamurthy

***Wherein in para No.48 and 49
it has held that,***

48. It is, therefore, patently clear that the Respondent Plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. This Court finds that the Respondent Plaintiff was not entitled to the relief of specific performance.

49. The Respondent Plaintiff may have been willing to perform his part of contract. It however appears that he was not ready with funds. He was possibly trying to

buy time to discharge his part of contract.

4. AIR 2011 Supreme Court 3234

Mrs. Saradamani Kandappan

-VS-

Mrs. S. Rajalakshmi and ors.

Wherein in para No.34 it has held that,

34. Section 54 of Contract Act provides that when a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make

compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract. The agreement in this case provides a good illustration for this section. The purchaser cannot claim that the vendors should produce the original title deeds and satisfy her regarding their title, or claim execution of the sale deed, unless and until she paid the entire consideration within the time stipulated in clause (4) of the agreement, which would enable the vendors to repay the loans and obtain release of the original title deeds.

5. Civil Appeal No.2526/2007

Oriental Insurance Co. Ltd.

-VS-

Premalata Shukla and ors.

Wherein in para No.14 it has held that,

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved

in accordance with law, would not arise.

6. Civil Appeal No.434/2013

Pyadi Ramana @ Ramulu

-VS-

Davarasety Manmatha Rao

Wherein it has held that,

The continuous readiness and willingness is a condition precedent to grant the relief of specific performance.

7. 2024 Live law (SC) 407

Rajesh Kumar

-VS-

Anand Kumar and ors.

Wherein it has held that,

Limitation - Suit of specific performance preferred on the last date of limitation -Every suit for

specific performance need not be decreed merely because it is filed within the period of limitation by ignoring time limits stipulated in the agreement. The courts will also frown upon suits which are not filed immediately after the breach/refusal. Held, the suit having been preferred after a long delay, the plaintiff is not entitled for specific performance.

16. It is pertinent to note here that, in present case it is not in dispute about the execution of Ex.D1 agreement of Sale by the deceased Chennappa infavour of the defendant. It is significant note here that, the defendant is claiming his possession over the suit property on the basis of Ex.D1. It is to noted here that, the plaintiffs have claimed that, the defendant is never in possession of the suit property and Ex.D1 is time

barred. It is pertinent to note here that, the defendant has not produced even a single document to show that he is in possession of the suit property by virtue of Ex.D1. It is pertinent to note here that, the defendant in his cross examination dated:- 12-08-2024 in page No.02 in para No.01 at 06th line and in page No.02 at 01st line has deposed as under:-

“ನಾನು 2004 ರಿಂದ ಇಲ್ಲಿಯವರೆಗೆ ದಾವಾ ಸ್ವತ್ತಿನ ಸ್ವಾಧೀನದಲ್ಲಿ ಇಲ್ಲದಿದ್ದರಿಂದ ದಾವಾ ಸ್ವತ್ತಿನ ಪಹಣಿ ಪತ್ರಿಕೆಯಲ್ಲಿ ಸ್ವಾಧೀನ ರಹಿತ ಕರಾರು ಎಂದು ಬರೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಕರಾರು ಪತ್ರದಂತೆ ನನ್ನ ಹೆಸರನ್ನು ದಾವಾ ಸ್ವತ್ತಿನ ಪಹಣಿ ಪತ್ರಿಕೆಯಲ್ಲಿ ನಮೂದು ಮಾಡಲು ತಹಸಿಲ್ದಾರರಿಗೆ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವ ಬಗ್ಗೆ ನನಗೆ ನೆನಪಿರುವುದಿಲ್ಲ. ನಾನು ಸದರಿ ದಾವೆ ಚಾಲ್ತಿಯಲ್ಲಿರುವಾಗ ತಹಸಿಲ್ದಾರರಿಗೆ ಅರ್ಜಿಯನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ”

It is to be noted here that, from the said evidence of the defendant it clearly appears that, he is not in possession of the suit property and from the said

evidence it further appears that to over come the lacuna has submitted the application to the Tahasildar, for entering his name in records pertaining to the suit property. It is to be noted here that, from perusal of the Ex.D1 it clearly appears that, it was executed on 05-06-2024 and the defendant is claiming his right over the suit property on time barred document which is not maintainable. That, the alleged Ex.D1 is not binding on the plaintiffs. That, the trial Court has rightly decreed the suit. That, there is no substance in the grievance vendicted by the defendant. Hence, without much discussion **Point No.1 is answered in the NEGATIVE.**

17. Point No.2:- That, as discussed on point No.1, I proceed to pass the following :-

ORDER

That, the appeal filed by the appellant-defendant under Order XLI Rule 1 of the Code of Civil Procedure, is hereby dismissed.

That, the Judgment and Decree passed by the trial Court in O.S. No.266/2020 dated:- 01.12.2025 is upheld.

That, no orders as to cost.

That, draw the decree accordingly.

That, the office is to re-transmit the trial Court records forthwith along with copy of this order.

(Directly dictated to the stenographer, typed by him, corrected by me and then pronounced in the open Court on this 15th day of July -2026)

(Hema Pastapur)
Sr. Civil Judge and JMFC,
Shahapur.