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	Registered on :- 16/01/2012
	Decided on :- 25/03/2026
	Duration :- 14 Y 02 M 19 D

**In the Court of Jt Civil Judge Junior Division, Jath Tq.Jath Dist.Sangli
(Presided over by Sanjay P. Bunde)**

RCS 131/2012

Exh. 79

Kenchappa Aambanna @ Amanna Hawgondi	]	
Age: Major, Occupation: Agriculture	]	Plaintiff
R/o Shendyal, Tq. Jath, Dist.Sangli	]	

Vs

1) Yamanabai Dhanappa Mang (since deceased),	]	
(Through her L.Rs	]	
1A) Shewanta Dhanappa Mang,	]	
Age:-40 years, Occupation:-Agriculture	]	Defendants
R/o Umrani road, Jath,	]	
Tq.Jath, Dist.Sangli.	]	
2) Mahibub Badashaha Kakatkar,	]	
Age:-Major, Occupation:-Agriculture	]	
R/o Walsang, Tq.Jath, Dist.Sangli.	]	

Appearance:-

Ld.Adv.Shri. S. K. Potnis, for the plaintiff.

Ld.Adv.Shri. R. S. Shinde, for defendant 1.

Ld.Adv.Shri. P. A. Naik, for defendant 2.

Judgment

(Dt.25/03/2026)

The suit is for specific performance of oral agreement, a decree of perpetual injunction restraining the defendants from obstructing

the plaintiff's possession over the subject matter, alternatively, for possession, and costs.

2 Brief facts of the plaintiff's case:- The subject matter of the suit is an agricultural land situated at Mouje Shedyal Tq.Jath, Dist. Sangli viz.

Sr. No	Gat No and Total admeasuring area in H & R	Assessm ent in Rs	Subject matter of the suit in H & R	Assessm ent in Rs	Hereinaf ter referred to as the
1	134 3 H 43 R	0.70 Ps	1 H 71 R 0.5 sq.m.	0.35 Ps	Suit property
	The subject matter is bounded on or towards East:- land of Sunita Balu Suryawanshi, West:- land of Dattu Tukaram Khandagale, South:- land of Babasaheb Dhondappa Jadhav, North:- land of Kenchappa Amanna Hawgondi (the suit property)				

3 It is averred that the Gat No.134 is the tenanted land under the Maharashtra (Bombay) Tenancy and Agricultural Lands Act, 1948 (the MTA & L Act) of the plaintiff's predecessor. Defendant 1 though a tenant under the MTA & L Act, the plaintiff has right to repurchase the suit property. The suit property is of restricted tenure. Defendant 1 has sold 1/2 share/ area in the suit property to the plaintiff. The plaintiff has a preferential right to purchase the suit property.

4 It is further averred that defendant 1 offered to sale the suit property to the plaintiff in the last week July 2011 for consideration of Rs.50,000/- (Rs.Fifty Thousand only) in the presence of Mallappa Gurubasappa Teli, Mahadev Mahananga Gugwad, and Babasaheb Jadhav. Defendant 1 agreed to sale the suit property to the plaintiff vide the oral agreement. The sale was to be completed in the last week of July 2011. Since, the plaintiff's predecessors were the landlord/owner of the suit property and defendant 1 was the tenant

under the MTA & L Act, and the suit property is cultivated by the plaintiff, for the mutual faith, no Agreement of Sale (the AoS) was executed. Despite the oral agreement, defendants 1 and 2 in collusion with each other, breached the oral agreement and defendant 1 executed a sale-deed in favor of defendant 2 on 17/08/2011 illegally and without possession. The same is patently illegal, and not binding on the plaintiff. Hence, the present suit.

5 Brief contentions of defendant 1:- The written statement cum say is below Exh.35. The claim has been denied and disputed. It has been denied and disputed that there was an oral AoS, as alleged by the plaintiff or otherwise. It has been contended that prior to the transaction by defendant 1 in favor of defendant 2, defendant 1 has asked the plaintiff his willingness to purchase the suit property. The plaintiff was not inclined to purchase the suit property on the grounds that he does not intend to purchase the same, he has no financial soundness, and he owns sufficient property for the livelihood of his family. The plaintiff told defendant 1 that if reasonable sale amount is received to sale out the same. It is only after the same, defendant 1 has sold the suit property to defendant 2. There was an agreement between defendants 1 and 2 in October 2009 whereby defendant 1 agreed to sale the suit property to defendant 2. Defendant 1 applied to the Sub-divisional Officer, Miraj (Sub division) (the competent authority) under Section 43 of the MTA & L Act. Defendant 1 has duly complied with the relevant documents for the requisite permission. Defendant 1 has deposited the requisite Nazrana amount @ 40 times of the valuation. The sale-deed was executed on 17/08/2011. defendant 2 possesses the suit property prior to the sale-deed. The sale-deed is legal and valid. Hence, the suit is opposed.

6 Brief contentions of defendant 2:- The written statement cum say is below Exh.22. The claim has been denied and disputed. The contentions raised by defendant 1 have been reiterated by way of defence. It has been further contended that even if it is considered that there was an oral AoS, the plaintiff has twisted the facts, and the conduct of the plaintiff in the light of subsequent events failed to issue a public notice or registered objections by issuing notice to the defendants. The plaintiff failed to object to the requisite permission obtained by defendant 1. The plaintiff failed to file a suit prior to the

sale-deed and seek injunctive relief. The cause of action has been stretched. Defendant 2 possesses the suit property as the absolute owner and possessor thereof vide the registered sale-deed. The plaintiff has no right, title, interest in the suit property. Hence, the claim is opposed.

7 To prove entitlement, the plaintiff has relied upon the following evidence in the form of affidavit-in-lieu of examination-in-chief viz

Sr.No	Particulars of the witnesses	Exhibit
1	Kenchappa/plaintiff /PW1	28 & 36
2	Mahadev Mahananga Gugwad/PW2	54
3	Mallappa Gurubasapp Teli/PW3	62
4	Babasaheb Dhondiba Jadhav/PW4	63

8 The plaintiff has relied upon following documentary evidence viz.

Sr.No	Particulars of the documents	Exhibit
1	V.F 8	8
2	V.F 7 and 12	9

9 The plaintiff has closed further evidence below Exh. 65

10 The defendants have relied upon the following evidence in the form of affidavit-in-lieu of examination-in-chief viz

Sr.No	Particulars of the witnesses	Exhibit
1	Shewanta/ defendant/DW1	58
2	Mahibub/DW2	71

11 The defendants have relied upon following documentary evidence

Sr.No	Particulars of the documents	Exhibit
1	V.F 7 and 12	76
2	ME 1262	77
3	Intimation order of the SDO	78

4	Sale-deed	74
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12 The defendants have closed their further evidence below Exh. 73.

13 Heard both the sides at length.

14 Gone through the short written notes of arguments filed on behalf of the plaintiff. A copy of the case laws referred to therein have not been annexed. To avoid prejudice, the same has been considered.

15 To the following issues/ point for determination, framed by the Ld. Predecessor below Exh.24.

16 The following points arose for my determination, to which I record my findings together with the reasons thereof:-

Sr.No	Points for determination	Findings
1	Whether plaintiff proves that the defendant No.1 has agreed to sale the suit property to him?	No.
2	Whether the plaintiff proves that an amount of Rs.50,000/- was to be paid to defendant No.1 for execution of the sale-deed?	No.
3	Whether plaintiff is entitled that he was ready and willing to perform part of his contract?	No.
4	Whether the plaintiff is entitled the sale-deed executed between defendant No. 1 and 2 be declared as null and void?	No.
5	Whether plaintiff is entitled for execution of sale deed in his favor from defendant No.1 and 2 for a sum of Rs.1,50,000/-?	No.
6	Whether plaintiff is entitled for the relief of injunction as prayed?	No.
7	Whether defendant No.2 is entitled for the relief of compensatory cost Rs.5000/-	No.

7A	Whether defendant No.1 is entitled for compensatory cost of Rs.20,000/-?	No.
8	What order and decree?	As per the final order.

Reasons

Points 1 to 7A:-

17 The points for determination being inter-linked, are taken up for hearing and discussion together, for the sake of brevity and convenience.

18 Admitted facts:-

- The plaintiff's predecessors were the original landlord/owners of the suit property, under the MTA & L Act.
- Defendant 1 was the tenant, under the MTA & L Act.
- The plaintiff has purchased the 1/2 portion out of the suit property from defendant 1.
- The said 1/2 portion is situated towards the northern side of the subject matter of the suit i.e., the suit property.
- The plaintiff's theory is of oral AoS.
- Defendant 1 has executed a registered sale-deed in favor of defendant 2 on 17/08/2011 duly registered with the Sub-registrar, Jath bearing No.3767/2011 for valuable consideration.
- The original sale-deed is below Exh.74.
- A copy of the requisite permission issued by the competent authority is at page 9 contain in Exh.74.
- The permission application was moved by defendant 1 on or about 14/12/2009.
- The competent authority issued the permission in favor of defendant 1 on or about 12/08/2011.
- The permission was issued to sale out the suit property to defendant 2.
- A copy of the said application was directed to defendant 2.
- The permission was issued by the competent authority by following due process of law.
- Original defendant 1 Yamunabai passed away during the pendency of the suit and her interest is represented by her daughter/ LR.

- The relevant provisions are Sections 2(a) to (h), 10, 20, and 25 of the Indian Contract Act, 1872 and Sections 10, 16 of the Specific Reliefs Act, 1963.

19 This Court is guided by the law laid down in **Chandrasahas Narayan Shetty Vs Misribai Ramkuvar Pandit and Ors 2009 SCC On Line Bom 610** wherein Hon'ble the Bombay High Court held that the normal course, grant of specific performance based on oral agreement is always considered with reservations. If the suit has to be allowed, the Court has to ascertain the terms on the basis of which the parties wanted to complete the transaction. In such a case, the terms or oral agreement are required to be placed before the Court in the form of evidence so as to crystallise the terms on the basis of which specific performance was agreed to be granted.

2009 SCC OnLine Bom 610 : (2009) 4 Mah LJ 980 : (2009) 5 Bom CR 295



In the High Court of Bombay

Specific Relief Act, Section 20

(Bombay)

(BEFORE R.Y. GANOO, J.)

Chandrasahas Narayan Shetty ... Appellant;

Versus

Misribai Ramkuvar Pandit and others ... Respondents.

F.A. No. 482 of 1990

Decided on April 20, 2009

(a) Specific Relief Act (47 of 1963), S. 20 — Grant of specific performance based on oral agreement — The terms of oral agreement are required to be placed before the Court in the form of evidence.

In the normal course, grant of specific performance based on oral agreement is always considered with reservations. Assuming that in a peculiar

Page: 981

case, the Court would like to grant the relief of specific performance it will be the duty of the Court to ascertain the terms on the basis of which the parties wanted to complete the transaction. In such a case, the terms of oral agreement are required to be placed before the Court in the form of evidence so as to crystallise the terms on the basis of which specific performance was agreed to be granted. In the present case, the evidence on record nowhere shows as to on what terms the specific performance was required to be granted. The quality of evidence placed before the Court in the matter of grant of specific performance was absolutely weak. Therefore grant of specific performance rightly declined.

(Paras 10 and 11)

20 K Nanjappa Vs R.A. Hameed (2016)1 SCC 762 wherein Hon'ble the Apex Court held that the specific enforceability of oral agreement, heavy burden lies on the plaintiff

Contract and Specific Relief

  

Particular Statutes

Specific Relief Act, 1963

— **Ss. 10 and 9 — Oral agreement — Oral agreement for sale of immovable property — Specific enforceability of** — *Held, same is permissible but heavy burden lies on the plaintiff to prove that there was consensus ad idem between the parties for the concluded agreement for sale of immovable property — Whether there was such a concluded contract or not would be a question of fact to be determined in the facts and circumstances of each individual case — It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties — Trusts and Trustees — [Trusts Act, 1882](#) - S. 91 - Oral agreement - Oral agreement for sale of immovable property - Specific enforceability of — Registration Acts and Rules — [Registration Act, 1908](#) - S. 17(2)(v) - Oral agreement - Oral agreement for sale of immovable property - Specific enforceability of — Property Law — [Transfer of Property Act, 1882](#) - Ss. 9 and 54 - Oral agreement - Oral agreement for sale of immovable property - Specific enforceability of — Contract and Specific Relief — Formation of Contract — Oral and Written Contracts - Oral agreement - Oral agreement for sale of immovable property - Specific enforceability of*

(Paras 21 and 22)

▸ *K. Nanjappa v. R.A. Hameed,*

(2016) 1 SCC 762 : 2015 SCC OnLine SC 779 : (2016) 4 CTC 76 (SC) : (2016) 4 Mah LJ 1 : (2016) 3 MPLJ 1 : (2015) 113 ALR 307 : (2015) 154 AIC 27 (SC) : (2016) 2 LW 673 (SC) : (2015) 6 ALD 41 (SC) : AIR 2015 SC 3389



21 PW1 is the plaintiff who reiterated the facts in the plaint during substantive evidence below Ex.28/36, such as PW1 possessing the suit property, oral agreement between himself and the deceased Yamunabai in July 2011, in respect of the suit property, in the presence of the panchas, for the agreed consideration, the deceased Yamunabai breached the agreement, issuing of notice to the deceased Yamunabai, who illegally executed the sale deed in favor of defendant 2 on or about 17/08/2011, PW1 being the contiguous owner has preferential right to purchase the suit property etc.,

22 As a matter of fact and record, the instant suit is based on the alleged oral agreement in July 2011 and prior to the same, there was

a transaction between PW1 and the deceased Yamunabai in 1995. The defence of defendant 1 is that in 2009, defendant 2 asked the plaintiff to purchase the suit property, who shown his inability to purchase the same and accordingly, the transaction was completed with defendant 2.

23 PW1 during cross-examination admitted that he applied to the competent authority for the permission to purchase the property from the deceased Yamunabai in 1995, which is in respect of the earlier transaction. PW1 has denied and disputed the said fact in the later part of the cross-examination. This is in respect of the earlier transaction between PW1 and the deceased Yamunabi. It is a matter of fact and record that PW1 had purchased 1/2 share (4 H 12 R land) in the suit property from the deceased Yamunabai in 1995 (earlier transaction). Further, PW1 admitted that he has not paid the requisite penalty for regularisation of the transaction. This is suggestive of the fact that pursuant to the earlier transaction, the mutation of name of PW1 was not carried out, for failure of PW1 to regularise the same.

24 PW1 during cross-examination admitted that he has challenged the mutation of name of defendant 1/DW1 before the competent authority and having lost the same and also before the appellate revenue authority.

25 A fact is brought on the record during cross-examination of PW1 that he cannot tell the date of the oral agreement between himself and the deceased Yamunbai. It is sine qua non for the plaintiff in a suit based on oral agreement and/or its specific performance to prove that there was an oral agreement between the parties, the parties agreed (mutually) to the oral terms ad-idem (i.e., the parties agreed to the same thing in the same manner).

26 On perusal of the pleadings of PW1 and his substantive evidence, a fact is clear that neither in the pleadings, nor during evidence PW1 deposed the date of the mutual oral agreement. What is simply mentioned is that in the last week of July 2011 there was such agreement. There is no mention of the details of the mutual oral agreement such as place and time of the meeting etc., In any case, it is a reasonable conduct during sale/purchase transaction that the

transactions are settled with a prior meeting, with a fixed date and time. This when considered with the case of the PW1 that there was an oral agreement between himself and the deceased Yamunabai, the fact remains the necessary details ought to have been mentioned in the pleadings. These facts were well within the knowledge of the PW1. In short the terms of the oral AoS have not been pleaded. If the facts are considered from the angle, that it is only the sale and purchase and the consideration amount was settled, the fact remains the suit property is of restricted tenure. The application for permission was moved by the deceased Yamunabai on 14/12/2009 and the same was allowed for the sale transaction with defendant 2 on 12/08/2011.

27 PW1 admitted that an inquiry was conducted by the SDO (the competent authority) which appears to be in respect of the prior permission to sale the suit property by the deceased Yamunabai to defendant 2. Therefore, this may unerringly point that the PW1 was aware of the permission application by the competent authority before the sale transaction with the defendant 2. Further, it has been admitted that at the relevant time, PW1 failed to sue the defendants for the necessary reliefs. A copy of the sale deed between the deceased Yamunabai and defendant 2 is below Ex.74. The sale deed (Ex.72) at page 9 a copy of the requisite permission issued by the competent authority has been annexed. On perusal of the said permission, it appears that on 14/12/2009 the deceased Yamunabai applied for the said permission and it has been granted on 12/08/2011 on due compliance of the formalities. Therefore, when there was an inquiry by the competent authority, during 14/12/2009 to 12/08/2011) PW1 had knowledge of the fact/transaction/proposed transaction or atleast the fact that the deceased Yamunabai intends to sell out the suit property to defendant 2 and/or any other person, other than the plaintiff/PW1. It may be said that upon application dt.14/12/2009 the inquiry was initiated/conducted by the competent authority and upon due satisfaction the deceased Yamunabai was called upon pay the 40% Nazrana amount (deposited on 11/08/2011) may be said to be subsequent to the inquiry and before granting of the requisite permission. The plaint has been presented on 06/01/2012.

28 If the facts are considered from another angle, that the oral AoS was agreed upon, the fact remains, the necessity of the permission has not been settled or negotiated upon. The reason of knowledge of the nature of the suit property, to the plaintiff is obvious for the reason that his predecessors in title were the landlords under the MTL & Act and therefore, unless there is permission of the competent authority, the sale cannot be completed.

29 On perusal of Exh.74, a fact is clear that the sale consideration mentioned therein is Rs.1,50,000/- (Rs.One Lakh Fifty Thousand only) on 17/08/2011. Even if the alleged oral AoS between the parties was settled in July 2011, the fact remains the alleged sale consideration of Rs.50,000/- (Rs.Fifty Thousand only) may not justified. In any case, it may be said that the market value of the property as per the ready reckoner of the State Government is Rs.1,50,000/- (Rs.One Lakh Fifty Thousand only). In short, neither the terms have been pleaded nor their appears any concluded contract.

30 The conduct of the parties have to be considered in the light of the earlier transaction between the PW1 and the deceased Yamunabai. It is now a matter of fact and record, that pursuant to the earlier transaction, the name of the PW1 could not be mutated for some technicality. Further, the silence on the part of PW1 vis-a-vis the apprehension on the inquiry by the competent authority may have triggered him to approach the Court. This fact has been suppressed by PW1 in the pleadings.

31 The facts may also be considered from the angle, that the permission in case of restricted tenure land (Class 2 occupancy) is applied for sale and purchase to the competent authority and therefore, unless there is some intention to sale or purchase the immovable property, the owner may not apply for the same. The suggestion that prior to the sale deed transaction (Ex.72) the deceased Yamunabai offered to purchase the suit proerty has been denied. If this has been admitted the existence of the oral agreement could have been inferred vis-a-vis preponderance of probability.

32 PW1 admitted that the challenge to the mutation of name of defendant 2 as well as the appeal thereof has failed (Exh.77 and 78).

The sale deed Ex.74 specifically mentions of handing over of the possession by the deceased Yamunabai to defendant 2. The prayer in the plaint is of alternatively of possession. PW1 could not produce any material to suggest that infact the plaintiff/PW1 possesses the suit property and not defendant 2.

33 PW2 has been examined to corroborate the fact of oral agreement between PW1 and the deceased Yamunabai in his presence. It is deposed that he is resident of Mouje Shedyad having ancestral land therein. He knows PW1 and the defendants. The nature of the suit property was of 'tenanted' one under the provisions of the Maharashtra (Bombay) Tenancy and Agricultural land's Act, 1949 (the MTA & L Act) of PW1. Yamunabai intended to offer the suit property for sale, prior to 13-14 years. PW1 was cultivating the suit property on behalf of the deceased Yamunabai. The suit property is adjoining to that of PW1's. The half share in the suit property has been sold by the deceased Yamunabai to PW1. PW1 offered to purchase the suit property for consideration of Rs.50,000/- (Rs Fifty Thousand only) from the deceased Yamunabai. The same was witnessed by PW2, Mallappa Gurubasu Teli, and Babasaheb Jadhav. The deceased Yamunabai agreed to the same. For the earlier transaction between PW1 and the deceased Yamunabai, an Agreement of Sale (AoS) was not executed. The deceased Yamunabai breached the oral agreement and executed the sale deed in favor of defendant 2.

34 The evidence of PW2 is bereft of the details of the oral agreement i.e., to say the date, time, and place of the oral agreement between the deceased Yamunabai and PW1 or the terms of the oral AoS such as the obtaining of the requisite permission. As already observed, when two persons sought to enter into an agreement to sale or purchase an immovable property even orally, then the same has to be by way of a formal meeting. As per the custom, there cannot be any casual talk that PW1 asked/offered the deceased Yamunabai to purchase the suit property for Rs.50,000/- (Rs Fifty Thousand only).

35 PW2 during cross examination denied the fact that in 2009 defendant 2 purchased the suit property. When PW2 deposed that he

is resident of Mouje Shedyad and having ancestral land therein, the suit property is situated at Mouje Shedyad and it may not be expected of PW2 to know that defendant 2 purchased the suit property. The sale-deed below Exh.74 is a registered document executed on 17/08/2011 and the revenue record mentions the name of defendant 2 as the owner and the possessor thereof, it is highly improbable that the person deposing about the oral agreement is unaware of the transaction by the deceased Yamunabai with defendant 2. This is in direct contradiction of para 6 in the affidavit of lieu of examination-in-chief of PW2 with mentions of the transaction of defendant 2.

36 PW3 has been examined on the same line as PW2 and as a panch witness to the oral AoS. The facts reiterated by PW2 during evidence has been deposed. During cross examination the suggestion that in 2009 the deceased Yamunabai sought/obtained permission of the competent authority has been admitted and after that the suit property was sold to defendant 2. Therefore, an irresistible conclusion may be drawn that PW3 knew about the requisite permission and it is not logical that the plaintiff would have no knowledge. PW1 during cross examination unequivocally admitted that the competent authority inquired into the permission application of defendant 1. This may be the position after 14/12/2009 and therefore, the plaintiff knew about the permission application after 14/12/2009 however filed the suit on or about 16/12/2011 i.e. after the sale-deed. The things would have been different if the suit has been filed prior to the sale-deed i.e., 17/08/2011. This may suggest that the plaintiff knew the fact and taking advantage of the permission dated 12/08/2011 came with the theory of oral AoS in July 2011.

37 PW4 is also examined to substantiate the fact of the oral AoS. While in para 6 of the affidavit in lieu of examination-in-chief, there is a mention of breach of the oral AoS and the execution of the sale-deed in favor of defendant 2, during cross examination does not know the date of the sale-deed. PW4 admitted that defendant 2 possesses the suit property.

38 Shewanta, the daughter/LR of deceased defendant 1 as DW1 during her substantive evidence reiterated the contentions in the written statement of original defendant 1, as to the sale-deed in favor

of defendant 2, she offering consent to the said sale-deed having delivered the possession and the absolute ownership and possession of defendant 2.

39 During cross examination, DW1 denied the suggestion that the suit property was possessed/ cultivated by the plaintiff. DW1 denied all the suggestions as the oral AoS by and between the plaintiff and her deceased mother.

40 Defendant 2 has examined himself below Exh.71 who reiterated the contentions in the written statement, contending absolute ownership and possession vis-a-vis the sale-deed Exh.72.

41 Defendant 2 during the cross examination admitted that he has not verified the record of rights of the suit property. Further, no public notice issued by him. A fact is admitted that towards northern side of the suit property, the land of the plaintiff is situated. The suggestion that there was oral AoS between the plaintiff and the deceased Yamunabai for consideration of Rs.50,000/- (Rs.Fifty Thousand only). It has been admitted that in the sale-deed there is mention of having received the consideration before the Sub-registrar. The same in no case would fortify the case of the plaintiff, for the reason that the grivence of non receipt of consideration is a matter for the original defendant 1 or her LR and in no case, the sale-deed is void for the law that non payment of consideration amount does not result into cancelation of the sale-deed in **Dahiben Vs Arvind (2020) 7 SCC 366**.

42 Even otherwise, there is no prayer challenging the sale-deed

43 Ld advocate for the plaintiff though mention several case laws nevertheless failed to provide a copy of the same.

44 The law in **Aloka Bose Vs Parmatma Devi and Others (2009)2 SCC 582** nevertheless failed to provide a copy of the same. In Aloka (supra) the law laid down is in the context of AoS executed only by vendor and not by the purchaser i.e., unilateral contract. Hence, the same may not be applicable the present facts, as the facts at the hand deals with alleged AoS.

45 The law in **Kollipara Shriramalu Vs T. Ashwath Narayana 1968 SCC OnLine SC 87** is in the facts and context of enforciability oral

agreement. As observed and discussed herein above the details of the oral AoS or the terms having being concluded has not been proved on preponderance of probability. The law in Kollipara (supra) may not be helpful to the plaintiff.

46 The law in Brijnandan Sinha Vs Jyoti Narayan on being searched on the search engine SCC OnLine and Manupatra MANU/SC/0085/1955 founds the citation **1955 (2) SCR 955 and AIR 1956 SC 66**. The same is in respect of contempt proceedings. Therefore, may not be considered.

47 N.P.Thirugnanam Vs Dr R.Jagan Mohan Rao 1995 SCC (5) 115 the facts and the law is clearly distinguishable in as much as therein the AoS was executed and the tenant put into possession. Now, reverting to the facts at the hand, neither the oral AoS nor the concluded contract proved. The plaintiff does not possess the suit property.

48 The facts and law in R.K. Mohamad Ubaidullkh Vs Hajee C Abdul Wahab of Hon'ble Madras High Court is on the point of readiness and willingness for a decree of specific performance vis-a-vis Section 16 (c) of the Specific Relief Act, 1963 (the Act). In the peculiar facts the plaintiff has failed to prove that there was oral AoS or the concluded terms and therefore, the question of readiness and willingness may not arise. In **His Holiness Acharya Swami Ganesh Dassji Vs Shri Sita Ram Thapar (1996) 4 SCC 526** laid the distinction between readiness and willingness to perform contract. By readiness means capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. Willingness means the conduct. Even otherwise the knowledge of the permission application to the plaintiff, takes out the case of readiness and willingness.

49 The claim of preferential right is a weak right. There is no challenge to the sale deed vis-a-vis Section 22 of the Hindu Succession Act, 1956. The issuance of notice by the plaintiff and the notice reply may at the most suggest that the notice has been received by the deceased defendant 1.

50 For the above reasons and discussions, the plaintiff has failed to aver/ plead and prove the oral AoS or terms of the AoS or the parties were ad-idem. The plaintiff has suppressed material facts and therefore, not entitled to any reliefs. The issues/points for determination are answered accordingly. Costs follows the event. Hence, the following

Order

The suit stands dismissed with costs.

2 Decree be drawn up accordingly.

Jath
Dt. 25/03/2026

(Sanjay P. Bunde)
Jt C.J.J.D.Jath