

KABD300019572022



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

Present:- Sri.B.CHENNAPPA. B.COM., LL.B., (SPL)
Senior Civil Judge and JMFC, Basavakalyan.

Dated this, the 4th day of February-2026.

Regular Appeal No. 29/2022

APPELLANT:

PLAINTIFF

Rajkumar S/o Gopinathrao Suryavanshi,
Age: 53 years, Occ: Agril & Business,
through his SPA holder Ahmad Khan
S/o Kshasim Khan Toti, Age: 60 years,
Occ: Agriculture, R/o Taj Colony,
Tq: Basavakalyan, Dist: Bidar.
(By Sri.Rajkumar.V.Mudbe., Advocate)

-VERSUS-

RESPONDENTS: 1. Smt. Sharadabai **(Died, by her Lrs)**

DEFENDANTS 1(a) Smt.Gouramma W/o Madivalappa Bhoge,

D/o Gurunathappa Biradar,
Age: 57 years, Occ: Agriculture,
R/o Belura village, Tq: Basavakalyan.

2. Basavaraj S/o Gurunathappa Biradar,
Age: 54 years, Occ: Agriculture,
R/o Tripuranth, Tq: Basavakalyan.

3. Sidramappa S/o Gurunathappa Biradar,

Age: 49 years, Occ: Agriculture,

R/o Tripuranth, Tq: Basavakalyan.

(R-1(a) is placed ex-parte)

(R-2 & 3 by Sri.Sanjay.S.Deshmuk., Advocate)

1.	Date of institution of Appeal.	10.10.2022
2.	Date of disposal	04.02.2026
3.	Total duration	Years Month Days 03 03 25

:: J U D G M E N T ::

1. The appellant, who was the plaintiff before the trial court in O.S.No.09/2013, being aggrieved by the judgment and decree passed by the learned Civil Judge & JMFC, Basavakalyan, dated 29.08.2022, has preferred this regular appeal U/Sec.96 R/w Order 41 Rule 1 of Code of Civil Procedure.

2. The appellant was the plaintiff and respondents were the defendants in O.S.No.09/2013, on the file of learned Civil Judge and JMFC, Basavakalyan.

3. The ranks of the parties to the appeal shall be referred to as appearing before the trial court.

4. After registration of the appeal, trial Court records are secured.

5. **Description of the suit property:-**

Land bearing Sy.No.27/A (old), Sy.No.27 (New), measuring 1.20 acres, out of 5.10 acres, situated at Tripuranth village, Tq: Basavakalyan, bounded by towards East: remaining land of defendants, West: land of Shankar Kamshetty, North: road and South: land of Babumiyan

6. **The case of plaintiff is as under :-**

It is stated in the plaint that, the defendant No.1 is the mother of defendant Nos.2 and 3. The husband of defendant No.1 and father of defendant Nos.2 and 3 by name Gurunathappa S/o Gundappa Biradar was the absolute owner and possessor of the suit property. Said Gurunathappa and defendant No.3 were in need of financial assistance to meet their family and other necessities. Accordingly, suit land was put for sale. At that time, plaintiff accepted the proposal made by said Gurunathappa and defendant No.3 to purchase the suit land. After negotiations, consideration amount was fixed at Rs.75,000/-. Accordingly, on 21.12.1990 an agreement was

reduced into writing. Through the said agreement, plaintiff paid Rs.11,000/- as an earnest money to said Gurunathappa and defendant No.3 before the attesting witnesses and thereby handed over the possession of the suit land in favour of plaintiff. Said Gurunathappa had agreed to execute the sale deed by receiving balance consideration amount. Subsequently, said Gurunathappa died, leaving behind him, the defendant Nos.1 to 3 as his legal heirs and successors. Thereafter, defendants got mutated the suit land in their names agreeing to execute the sale deed after receiving balance consideration amount. Though the plaintiff was always ready to perform his part of contract, but the defendants did not come forward to clear of the dues, disputes and charge created over the suit land. Thereby, execution of the sale deed was delayed. However, plaintiff remained in physical possession of the suit land. Subsequently, on several occasions contacted the defendants and had requested them to execute the sale deed in pursuance of the agreement executed by Gurunathappa by receiving balance consideration amount. However, defendants did not come forward to execute the sale

deed. Therefore, plaintiff got issued the notice to the defendants calling upon them to receive the balance consideration amount and to execute the sale deed. Despite service of the notice, defendants did not turn up. Hence, plaintiff is constrained to file instant suit seeking decree for specific performance of contract.

7. In response to the process, defendant Nos.1 and 2 appeared through their counsel. Defendant No.3 appeared through his separate counsel. Defendant Nos.1 and 2 contested the suit by filing their written statement, inter-alia, denying the averments made in the plaint. Furthermore, it is contended that the sale agreement dated 21.12.1990 relied by the plaintiff is forged and fabricated document, which is created for the purpose of filing this suit. Plaintiff and defendants are Hindus. Therefore, both of them do not know Urdu language. Under such circumstances, agreement could have been reduced into writing in Kannada or in English language. Whereas, it is written in Urdu language on a bond paper of Rs.10/-. The sale agreement relied by the plaintiff was never executed either by Gurunathappa or defendant No.3.

There are many omissions and discrepancies in the translated copy of the sale agreement. In the original sale agreement, suit land survey number is shown as 27/37. Whereas, in the translated copy, it is shown as 27/A, which clearly indicates that the translated copy is not a replica of the original sale agreement. The recitals of the agreement show that the possession of land mentioned therein was handed over. Under such circumstances, said agreement is not at all admissible in evidence. Plaintiff, in collusion with his GPA holder and the attesting witnesses mentioned in the alleged sale agreement, created the agreement to defeat the rights of defendants involved in the suit land. The name of defendant No.3 is Sidramappa. Whereas, in the sale agreement, it is mentioned as Sidramaiah. Land bearing Sy.No.27/A (old) Sy.No.27 (new) is situated in the prime locality of Basavakalyan city. Defendants got converted 01.00 acres in Sy.No.27, into non-agriculture purpose and thereby formed a layout and it was also approved by the competent authority. Subsequently, 4.10 acres, in Sy.No.27/2, corresponding to Sy.No.27/A (old), was converted into non-agriculture and lay out was formed and it

was duly approved by the competent authority. Therefore, said Sy.No.27 is no longer is an agriculture land. Plaintiff has failed to prove that he is always ready and willing to perform his part of contract on the basis of alleged sale agreement. Defendants have alienated more than 35-40 plots formed in Sy.No.27. Some of the purchasers have also constructed their residential houses. Despite, plaintiff by creating a false and bogus sale agreement has filed instant frivols suit to harass the defendants with an oblique motive. Defendants have issued the suitable reply notices to the legal notice issued by the plaintiff by denying the contents of the notice. Suit of the plaintiff is barred by limitation. Plaintiff has not at all shown what was the circumstances incorporated in the agreement of sale and within what time the sale deed had to be executed. Contrary to it, the averment is made in the plaint stating that, after getting cleared all the objections, disputes and encumbrances, sale deed had to be executed. Therefore, the recitals of the agreement and the contents of plaint do not tally with each other. Deceased Gurunathappa and defendant No.3 are not the absolute owner and possessors of the suit land.

Accordingly, they were not competent to execute the alleged sale agreement. Among other grounds, it is prayed for dismissal of the suit.

8. The trial Court, after considering the above said rival pleadings, framed the following issues.

:: I S S U E S ::

1. Whether the plaintiff proves that ancestors of defendants namely Gurunathappa Biradar executed an agreement of sale with respect to suit property on 21.12.1990 in favour of plaintiff ?
2. Whether the plaintiff proves that said Gurunathappa received an amount of Rs.11,000/- towards earnest money of contract dated 21.12.1990?
3. Whether plaintiff proves that he is ready and willing to perform his part of contract?
4. Whether the defendant proves that suit of plaintiff is barred by limitation?
5. Whether plaintiff proves that defendants are trying to alienate suit property?

6. Whether plaintiff proves that he is ready and willing to perform his part of contract?

7. Whether the plaintiff is entitle for the relief of specific performance of contract?

8. Whether plaintiff is entitle for the relief of permanent injunction?

9. What order or decree?

9. In order to prove the above the said issues, before the trial Court, the Power of Attorney Holder of plaintiff examined himself as PW-1 and also got examined one witness as PW-2. Plaintiff produced in all 27 documents as per Ex.P-1 to 27. Ex.P-1 is the original sale agreement, Ex.P-1(a) is the translated copy of Ex.P-1, Ex.P-2 is the special power of attorney executed by the plaintiff in favour of PW-1, Ex.P-3 is legal notice, Ex.P-4 to 6 are postal receipts, Ex.P-7 to 8 are postal acknowledgment cards, Ex.P-9 is returned postal cover, Ex.P-9(a) is copy of legal notice, Ex.P-10 is reply notice, Ex.P-11 to 22 are revenue records of suit property, Ex.P-23 is mutation copy, Ex.P-24 and 25 are copies of caveat petition, Ex.P-26 is map of Tripuranth village and Ex.P-27 is Akarband. In rebuttal, defendant No.3 examined himself as DW-1 and

also got examined one witness as DW-2. Defendants produced 03 documents as per Ex.D-1 to 3. Ex.D-1 is the certified copy of NA order, Ex.D-2 is the certified copy of layout and Ex.D-3 is the certified copy of revenue record of suit land. After recording the evidence of both the sides, the trial court heard the arguments and by answering issue Nos.1 to 8 in the negative had dismissed the suit through it's judgment and decree, dated 29.08.2022.

10. Being aggrieved by the said judgment and decree, plaintiff has preferred this regular appeal, on the grounds that, the judgment and decree under appeal are erroneous. Therefore, same are liable to be set aside. The judgment and decree passed by the trial court are lacking sufficient reasoning. As a matter of fact, the trial court has not given proper reasoning to arrive conclusion on the issues framed. The heavy burden was on the plaintiff to prove the averments made in the plaint. Plaintiff successfully proved his case by leading oral and documentary evidence. This fact is not considered by the trial court and thereby mechanically passed the judgment, without proper reasoning on all the issues. Though plaintiff is in

possession and enjoyment of the suit land since the date of execution of the sale agreement, but this fact is not noticed by the trial court and thereby dismissed the suit. Though plaintiff proved that he is always ready and willing to perform his part of contract and on the contrary, defendants failed to prove their willingness to perform their part of contract. But, the trial court, without appreciating the evidence on record in the right perspective had dismissed the suit. During cross-examination of PW-2, he admitted that, Gurunathappa was in need of financial assistance. Due to this, said Gurunathappa and defendant No.3 sold the suit land under Ex.P-1. But, the trial court not appreciated the evidence of PW-2 in proper manner and thereby arrived wrong conclusion. DW-1 during his cross-examination clearly admitted that his father Gurunathappa was managing the family affairs. He also admitted that, there was litigation pending for a long period in respect of Sy.No.26 of Tripurant village and his father had incurred much expenses to prosecute said litigation. Therefore, this admission of DW-1 clearly shows that his father Gurunathappa was in need of money to prosecute the

suit and therefore he had alienated the suit property in favour of plaintiff and thereby executed the sale agreement. These admissions are not considered by the trial court. Despite several admissions made by the DW-1, the trial court by ignoring the same, blindly dismissed the suit. Plaintiff filed IA No.15, under 26 rule 10(A) R/w Sec.151 of CPC., before the trial court, seeking to send Ex.P-1 agreement to hand writing expert for comparison of admitted and disputed signature of defendant No.3. However, the trial court rejected the said application stating that defendant No.3 not filed written statement. Besides, it was observed that, when the case is posted for judgment, the court has not power to recall the order except pronouncing the judgment. Defendants are disputing the signatures appearing in Ex.P-1. Under such circumstances, trial court ought to have allowed the application and permitted the plaintiff to send Ex.P-1 and admitted signature of DW-3 to the hand writing expert for comparison. Rejection of said application amounts to denying the justice. Among other grounds, it is prayed to allow the

appeal by setting aside the judgment and decree of the trial court.

11. I have heard the arguments of learned counsel appearing for appellant/plaintiff and the respondents/defendants. I have perused the material on record. The following point arise for my consideration.

:: POINTS FOR CONSIDERATION ::

1) Whether appellant has made out grounds to condone the delay and therefore IA No.I is liable to be allowed?

2) Whether the trial court without perusing the oral and documentary evidence on record in the right perspective has wrongly passed the judgment and decree by partly decreeing the the suit. Therefore, interference by this court is warranted?

3) What order ?

12. My findings on the above points are as under:-

Point No.1 :- In the affirmative.

Point No.2 :- In the negative.

Point No.3 :- As per final order for the following:

:: R E A S O N S ::

13. **Point No.1:** Appellant/plaintiff has filed IA No.I, U/Sec.5 of Limitation Act, seeking condonation of two days delay caused in filing the appeal. In support of IA No.I, appellant/plaintiff has sworn to an affidavit stating that appellant is a cardiac patient. Therefore, he could not contact his counsel within time to prefer appeal. Therefore, there is delay of two days in preferring the appeal. Respondents have not resisted the said application by filing their objections. In view of the reasons assigned in the affidavit filed in support of IA No.I and to dispose of the appeal on merits rather on technical ground, I am inclined to condone the delay of two days caused in preferring the appeal. **Accordingly, I answer point No.1 in the affirmative.**

14. **Point No.2:** I have gone through the judgment and decree of the trial court. Having regard to the arguments advanced by the learned counsel appearing for the appellant and the respondents, I have meticulously gone through the oral and documentary evidence. On perusal of the judgment and decree passed by the trial court in O.S.No.09/2013, dated

29.08.2022, it reveals that the trial court came to conclusion that plaintiff failed to prove due execution of the sale agreement by deceased Gurunathappa and defendant No.3 by receiving part of sale consideration amount and thereby dismissed the suit.

15. To prove the respective issues before the trial court, the Power of Attorney holder of plaintiff has examined himself as PW-1. During his examination-in-chief, he has reiterated the averments made in the plaint. During his cross-examination, he has admitted that plaintiff is his friend. He has admitted that plaintiff has no hurdle or inconvenience to come to court and give evidence. The suit is filed in respect of Sy.No.27. He has admitted that the total extent of Sy.No.27 was 05.10 acres. He has also admitted that said land is ancestral property of defendants and deceased Gurunathappa. He has also admitted that since Gurunathappa is the eldest member of the family of defendants, therefore his name was appearing in the revenue records. He has deposed that, at the time of execution of the sale agreement at Ex.P-1, he was present. However, he did not sign on said document as an attesting

witness. He was called by the plaintiff, defendant No.3 and Gurunathappa. Ex.P-1 was reduced to writing in his presence in old Tahasil Office. Ex.P-1 was executed in the shop of deed writer situated in the old Tahasil Office. He has admitted that during 1990, there were number of job typing workers in Tahasil officer, who used to type in Kannada and English language. He has admitted that plaintiff does not know Urdu language. At the time of negotiations, defendant Nos.1 and 2 were also present in the house. On the date of negotiation, an amount of Rs.1000/- was paid to Gurunathappa by the plaintiff. However, in this regard, no receipt was passed. Gurunathappa was in need of money for his medical expenses. Therefore, suit land was put for sale. He has admitted that in Ex.P-1 it is agreed to execute the sale deed within 4 to 6 months. Ex.P-1 was executed on the next day of negotiations. Before he reached the office of old Sub Registrar, already stamp paper was brought. However, he does not know who did bring said stamp paper. He has further deposed that no time was fixed in Ex.P-1 for execution of the sale deed, but it was agreed that sale deed had to be executed within 2-3

years by receiving balance consideration amount. He has admitted that, at the time of execution of Ex.P-1, defendant Nos.1 and 2 were not called to sign on the agreement. He has denied that since the suit land is situated in the prime locality of the Basavakalyan, therefore he colluding with plaintiff created Ex.P-1 to dupe the valuable land of defendants. He has admitted regarding conversation of Sy.No.27, measuring 5.10 acres into non-agriculture and forming a layout. He has also admitted that, in the said layout, more than 35 to 40 plots were alienated by the defendants. He has denied that he is deposing falsely that, no plots are formed in the suit land. About 4 to 6 years back, he came to know about conversation of suit land into non-agriculture and forming the plots, while labours were carrying out work in the suit land. He has admitted that plaintiff did not issue notice about 22 years back calling upon the defendants to accept the balance consideration amount and to execute the sale deed.

16. One Hanmanthappa S/o Tulajappa Bokke is examined as PW-2. He is said to be an attesting witness of Ex.P-1. During his examination-in-chief, he has deposed as per the

version of plaintiff. During his cross-examination, he has deposed that, he does not know Urdu language. Ex.P-1 was written in Tahasildar Office, Basavakalyan. He has deposed that nobody gave instructions to the deed writer to prepare Ex.P-1 in Urdu language. Deed writer prepared Ex.P-1 after perusing the revenue records of the suit land. At the time of execution, it was agreed by the plaintiff to pay the remaining amount of Rs.65,000/- within 2-3 months. However, he does not know whether said condition is incorporated in the agreement. He was not present when plaintiff approached the defendant No.3 and his father and tendered the balance consideration amount. However, plaintiff informed the same to him. Since it was agreed to execute the sale deed within 03 months, therefore, Ex.P-1 was not registered.

17. In rebuttal, defendant No.3 has examined himself as DW-1. During his examination-in-chief, he has deposed by reiterating the averments made in his written statement. During his cross-examination, he has deposed that the signature appearing on Ex.P-1 does not belong to him. He has admitted that PW-2 is the resident of Tripuranth village. He

has denied that he brought the stamp paper from one Gadigeppa Dabare. He has denied that, after sale talks, he and his father had furnished the information to prepare sale agreement. He has admitted that, prior to 2000, in Hyderabad-Karnataka region, documents were used to write in Urdu language. He has denied that Ex.P-1 though was written in Urdu language, but it's contents were read over to him by the deed writer. He has denied that on 21.12.1990, he handed over the possession of the suit land in favour of plaintiff and at that time he had received the earnest money of Rs.11,000/-. He has admitted regarding the civil dispute pending in respect of Sy.No.26. He has denied that, since 21.12.1990 to till filing of the suit, plaintiff had requested him and his father to execute the sale deed by receiving balance consideration amount. He has deposed that, he issued the reply notice to the notice issued by the plaintiff. He has denied that suit land is still agriculture land and it is in possession and enjoyment of plaintiff. He has admitted that, after 2013 land value situated in Tripuranth village has been drastically raised. He has denied that, in view of the same, though his

father executed the sale agreement agreeing to sell the suit property, but in order to avoid execution of the sale deed, he is deposing falsely.

18. One Maruti S/o Mahadappa Chamale is examined as DW-2. During his examination-in-chief, he has deposed supporting the version of defendants. During his cross-examination, he has admitted regarding the civil dispute in respect of Sy.No.26. He has admitted that deceased Gurunathappa was in need of money to prosecute the said civil dispute. However, he has denied that in order to repay the debts, Gurunathappa had alienated Sy.No.26, measuring 1.30 acres in favour of Ahmad Khan and Sy.No.27, measuring 1.20 acres in favour of plaintiff. He has denied that, suit land is an agriculture land and there is no plots formed in the said land. He has denied that, Gurunathappa executed the sale agreement, agreeing to sell the suit property for Rs.75,000/- and received earnest money of Rs.11,000/-. He has admitted that one Hanmantappa S/o Tuljappa is his relative and there is signature of said Hanumanthappa on Ex.P-1.

19. Considering the above said oral and documentary evidence, the initial burden of proving due execution of the suit sale agreement by deceased Gurunathappa and defendant No.3 is on the plaintiff. Though there was no hurdle to plaintiff to appear and depose before this court to prove Ex.P-1, but he has examined his PA holder to prove the execution of the agreement for the reasons best known to him. Though PW-1 has deposed that he was present at the time of sale talks and execution of the agreement, but his signature does not find place in the suit agreement. Therefore, it can be inferred that PW-1 was not present at the time of execution of alleged agreement and therefore he has no personal knowledge about the case facts. It is admitted that, parties to the agreement did not know Urdu language. However, suit agreement is in Urdu language. It is elicited that, there were several job typing workers in Basavakalyan, who used to prepare the documents in English and Kannada. Despite, the suit agreement was prepared in Urdu for the reasons best known to the plaintiff. It is also elicited that, to prepare the suit agreement, none of the parties to the agreement gave the instructions. On the other

hand, agreement was prepared by the deed writer by perusing the revenue records. In Ex.P-1, the survey number of suit land is mentioned as 27/37. Whereas, in the translated copy of Ex.P-1 i.e., Ex.P.1(a), the survey number of suit land is mentioned as 27/A. It is also elicited that Sy.No.27, measuring 5.10 acres had been concerted into non agriculture and a layout is formed making several plots. It is also elicited that, about 35 to 40 plots formed in the said layout were alienated. Though plaintiff asserts that he is possession and enjoyment of suit land by virtue of suit sale agreement, but to substantiate the same, he has not produced any concrete evidence, except relying on the Ex.P-1. If at all, plaintiff is in possession and enjoyment of the suit land, under such circumstances, how the suit land was converted into non-agriculture; a lay out was formed and it is duly approved by the concerned authority and several plots were alienated. Though the alleged agreement was executed on 21.12.1990, but till 2013, no notice was issued either to deceased Gurunathappa or to defendants calling upon them to receive the balance consideration amount and to execute the sale

deed. Only after death of Gurunathappa suit was filed in the year 2013. Though in Ex.P-1, no time is fixed to conclude the contract i.e., to execute the sale deed, but as per evidence of PW-1, it was agreed to execute the sale deed within 4 to 6 months from the date of sale agreement. The agreement is dated 21.12.1990. Suit was filed on 10.01.2013. Therefore, in view of the above said admission given by PW-1 and filing of the suit in the year 2013, I am of the view that, the suit is barred by limitation.

20. In the agreement, it is recited that, for the purpose of development of lands and other legal necessities, deceased Gurunathappa and defendant No.3 had alienated the suit land. Whereas, in the plaint, it is stated that deceased Gurunathappa and defendant No.3 were in need of financial assistance to meet their shastric and other private necessities and therefore they had put the suit land for sale. Contrary to the said averments, PW-1 has deposed that Gurunathappa was in need of money for his medical expenses. PW-1 has also deposed that, there was civil litigation pending in respect of Sy.No.26 and therefore suit land was put for sale. Considering

the above said versions, it reveals that, plaintiff himself is not definite about the purpose for which the deceased Gurunathappa was in need of money. It is also apt to mention that neither deceased Gurunathappa nor the defendant No.3 is the absolute owner of the suit land. Therefore, both of them were not competent to alienate the suit land, without the consent and concurrence of the defendants herein. Merely because one of the attesting witnesses is examined to prove the execution of agreement and DW-1 and 2 have admitted that signatures of attesting witnesses on Ex.P-1, it cannot be held that the suit agreement is duly proved. During cross examination of PW-1 and 2, material admissions were elicited, which go against the version of plaintiff. Therefore, I am of the view that plaintiff has failed to prove that deceased Gurunathappa and defendant No.3 executed the sale agreement agreeing to sell the suit property.

21. I have gone through the judgment of the trial Court. The decision arrived by the trial Court in dismissing the suit of plaintiffs is based on the material placed on record. Therefore, interference by this court in the judgment and decree of the

trial court is not warranted. Accordingly, the appeal preferred by the plaintiff deserves to be dismissed. **Accordingly, I answer point No.2 in the negative.**

22. **Point No.3:-** In view of the foregoing reasons and my findings given on point No.1 and 2, I proceed to pass the following:

:: O R D E R ::

The appeal preferred by the appellant/plaintiff is dismissed with costs.

Consequently, the judgment and decree passed in O.S.No.09/2013, dated 29.08.2022, by the learned Civil Judge and JMFC, Basavakalyan, are confirmed.

Office to consign the records and send the same to the trial Court immediately.

(Partly dictated to the stenographer transcribed and typed by him and partly dictated on the laptop directly, corrected and signed by me, then pronounced in the open court, on this the 4th day of February-2026).

(B.CHENNAPPA)
Senior Civil Judge & JMFC,
Basavakalyan.