



Form No.9 (Civil)
Title sheet for
Judgment in
suits (R.P. 91)

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C.,
AT NAGAMANGALA.**

Dated, the 18th day of June 2022.

Present :

Sri. Girigowda B. B.A.L., LL.B.
Civil Judge & J.M.F.C.,
Nagamangala.

O.S. No.263/2020

Plaintiff : Sri. Suresha,
S/o Late Chikkegowda,
Aged about 42 years,
R/o Kanchanahalli Village,
Bellur Hobli, Nagamangala Taluk.

(By Sri. NSR Advocate)

-Vs-

Defendants : 1. Sri. Swamy,
S/o Eraiah,
Aged about 36 years.
2. Smt. Chikkamma,
W/o Swamy,

Aged about 30 years.

Both are R/o Yalachikere Village,
Bellur Hobli, Nagamangala Taluk.

(D1 and 2 Placed Exparte)

1. Date of institution of the suit: 23.12.2020.
2. Nature of the suit : Specific Performance.
3. Date of the commencement
of recording of the evidence : 01.10.2021.
4. Judgment pronounced on : 18.06.2022.
5. Total duration : Year/s Month/s Day/s
01 05 26

(Girigowda B.)
Civil Judge & J.M.F.C.,
Nagamangala.

J U D G M E N T

This suit is filed by the Plaintiff against the Defendants for the relief of specific performance of contract.

2. The brief facts of the case is as follows :

The defendants are the absolute owners in possession and enjoyment of the suit properties. They offered to sell the suit schedule properties for their legal necessity

i.e., towards expenses of their family, as a kartha of the family the 1st defendant had decided to sell the suit schedule properties to the plaintiff for valuable consideration and offer made by the defendants has been accepted by the plaintiff. The terms of sale also fixed for 3 years and sale price was fixed at Rs.4,50,000/-. Accordingly, the defendants entered into registered agreement to sell the suit schedule properties to the plaintiff as per agreement dated 01.12.2017. Under the agreement of sale, the plaintiff paid sum of Rs.4,00,000/- as an advance, the defendants have acknowledged the same in the presence of witnesses. The defendants agreed to receive balance sale price of Rs.50,000/- from the plaintiff and to execute the regular sale deed at the office of Sub-Registrar, Bellur after getting necessary documents prepared for execution of sale deed and also under take to affix all the signatures of the family members to the sale deed.

3. It is further submitted that the plaintiff is ready and willing to perform his part of contract i.e., to pay balance

sale price of Rs.50,000/- to the defendants. The plaintiff many a times approached the defendants and asked them to perform their part of contract, but the defendants giving one or other reasons postponed to execute the sale deed and ultimately they failed to perform their part of contract. Left with no alternative the plaintiff got issued legal notice to defendants on 23.11.2020, said notice was duly served on the 1st defendant through registered post on 25.11.2020. As per the intimation issued by the postal authority the 2nd defendant did not received the said notice. The plaintiff even today is ready to perform his part of contract. There is absolutely no cause or reasons for the defendants to desist from executing the sale deed, the defendants dragged to execute the sale deed only with a malafide intention to harass the plaintiff. The cause of action arose for the soon on 01.12.2017 when the agreement of sale was executed and 23.11.2020, 25.11.2020 when notice issued was acknowledged by defendant no.1 and also many occasions at Yalachikere village where the suit schedule properties are

situated and the defendants are residing. Hence, filed this suit.

4. After registration of suit, the suit summons was issued to the defendants. In spite of due service of suit summons the defendants remained absent, hence they have placed *ex parte*.

5. Heard the arguments.

6. Now the points that arise for my determination are as under:-

1) Whether plaintiff proves that defendants have entered into agreement of sale dated 01.12.2017 with the plaintiff to sell the suit schedule properties and received sum of Rs.4,00,000/- towards advance sale consideration?

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

3. Whether the plaintiff is entitled for specific performance of contract as sought for?

4. What order?

7. I have heard and perused the materials placed on record.

8. My answer to above points is as follows:-

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:-

: R E A S O N S :

9. **Points No.1 and 2** : These points are taken up together for common discussion, since they are interconnected under the same set of facts.

10. As per **Sec.101 to 103 of Indian Evidence Act**, *the burden of proof lies on the plaintiff to establish his averments made in the plaint*. The Plaintiff has examined before the court as PW-1 and filed affidavit evidence in lieu of his examination-

in-chief, wherein he has deposed inconsonance with the plaint averments. PW-1 in support of his oral evidence has got marked Ex.P1 to Ex.P10. Ex.P1 is the original registered agreement of sale dated 01.12.2017, Ex.P2 to 4 are the RTC extracts, Ex.P5 is the office copy of legal notice, Ex.P6 to 8 are the postal receipts and acknowledgement, Ex.P9 is the unserved postal cover, Ex.P9(a) is the Legal Notice and Ex.P10 is the Encumbrance certificate. One Shankar Heggade is one of the attesting witness to the agreement of sale is appeared before the court and examined as PW-2 and he has filed his affidavit evidence in lieu of chief-examination, wherein he has deposed that the defendants on 01.12.2017 executed agreement of sale in favour of plaintiff and received amount of Rs.4,00,000/- as advance sale consideration amount. Further he has identified signatures of the plaintiff, defendants and witnesses as Ex.P1(a) to (e) in agreement of sale.

11. This court has carefully perused the records in order to ascertain as to whether the defendants are the

absolute owners of the suit schedule property. Ex.P2 to 4 are the RTC extracts of the suit schedule properties for the year 2019-20 and 2020-21 standing in the name of 1st defendant. Hence, this court is of the opinion that the defendants are the absolute owners of the suit schedule properties. After careful perusal of materials available on record in order to ascertain whether the defendants have executed agreement of sale in favour of plaintiff by receiving advance sale consideration amount of Rs.4,00,000/- as stated in the plaint, plaintiff has got marked Ex.P1 i.e., registered agreement of sale. After perusal of Ex.P1 it appears to this court that defendants have executed agreement of sale in favour of plaintiff for total sale consideration amount of Rs.4,50,000/- and received Rs.4,00,000/- as advance sale consideration and agreed to receive balance sale consideration amount and to execute the sale deed after producing the required documents for registration of sale deed. The Hon'ble Apex Court in a recent decision **Civil Appeal No.3681-3682/2020 decided on 16.11.2020 (Rattan Sing Vs Nirmal Gill)** held that, *a document*

is presumed to be genuine if the same is registered and the onus of proof otherwise is on the person who challenged the stated registered document. During chief-examination of PW-1 the signatures of defendants were marked as Ex.P1(b) and (c). PW-2 being the attesting witness to Ex.P1 has clearly deposed that defendants on 01.12.2017 executed the agreement of sale and received advance sale consideration amount from the plaintiff. After considering the oral and documentary evidence of PW-1 and 2, this court is of the opinion that the defendants have executed Ex.P1 in favour of the plaintiff by receiving advance sale consideration amount. When the defendants failed to appear before the court and contest the suit, then this court by considering the oral and documentary evidence adduced by the PW-1 and 2 is of the opinion that the plaintiff has proved that the defendants have executed Ex.P1 agreement of sale in favour of plaintiff and received advance sale consideration amount of Rs.4,00,000/-.

12. It is the case of plaintiff that he is always ready and willing to perform his part of contract. In order to substantiate the said contention, PW-1 has got marked office copy of legal notice at Ex.P5, postal receipts at Ex.P6 and 7, postal acknowledgment at Ex.P8. This court has carefully perused said documents, after perusal of the same, it is very much clear that plaintiff has requested the defendants to receive balance sale consideration amount of Rs.50,000/- and execute the sale deed. Ex.P6 to 8 are the postal receipts and acknowledgment shows that notice was duly served on the defendants. When the defendants failed to issue reply to the said legal notice though they received Ex.P5, then this court is of the opinion that the defendants have admitted contents of Ex.P5 legal notice. After considering the said aspect legal notice and failure of the defendants to comply the legal notice this court is of the opinion that plaintiff is always ready and willing to perform his part of contract. Therefore, I answered

Point No.1 and 2 in the Affirmative.

Point No.3 :-

13. When the plaintiff has established the execution of said agreement of sale by the defendants in his favour and his ready and willingness to perform his contract, this court is of the opinion that if an order of specific performance is not granted in favour of plaintiff, he will be put great hardship as he has already paid major part of his consideration and in view of the defendants have not come forward to put forth their case as to show how they are going to put to hardship if relief of specific performance is granted in favour of plaintiff. The materials available on record show that there are no legal impediments to grant the relief of specific performance of agreement of sale as prayed by the plaintiff. Hence, plaintiff is entitled for specific performance of contract. Therefore, I answered **Point No.3 in the Affirmative.**

POINT No.4 :

14. In view of my findings on Points No.1 to 3, I proceed to pass the following :-

ORDER

Suit of the plaintiff is hereby decreed with costs.

The Defendants are hereby directed to execute registered sale deed in favour of plaintiff by receiving balance sale consideration amount of Rs.50,000/- (Rupees fifty thousand only) in respect of the suit schedule properties within a period of three months from the date of this order.

In the event of failure of the defendants to comply this order within the stipulated period, the plaintiff is at liberty to get execute the decree in accordance with law.

Draw decree accordingly.

(Dictated to the stenographer directly to the computer corrected and pronounced by me in the Open Court on this the 18th day of June 2022)

(Girigowda B.)
Civil Judge and J.M.F.C.
Nagamangala.

ANNEXURE**Witnesses examined on behalf of plaintiff :**

PW-1 : Suresha.

PW-2 : Shankar Heggade.

Documents marked on behalf of plaintiff :

Ex.P1 : Original registered agreement of sale dtd 01.12.2017.

Ex.P2 to 4 : RTC extracts.

Ex.P5 : Office copy of legal notice.

Ex.P6 to 8 : Postal receipts and acknowledgement.

Ex.P9 : Unserved postal cover.

Ex.P9(a) : Legal Notice.

Ex.P10 : Encumbrance certificate.

Witnesses examined on behalf of defendants:

- N I L -

Documents marked on behalf of defendants:

- N I L -

**Civil Judge and J.M.F.C.
Nagamangala.**