

KAMD210023782022



Presented on : 03-11-2022

Registered on : 15-11-2022

Decided on : 14-06-2024

Duration : 1 years, 7 months, 11 days

**IN THE COURT OF THE II ADDL CIVIL JUDGE AND J.M.F.C.,
KRISHNARAJAPETE**

:PRESENT:

SMT. ARPITHA K.V.

B.A.LL.B., LL.M.

II ADDL.CIVIL JUDGE AND JMFC,
K.R.PETE.

DATED THIS THE 14TH DAY OF JUNE-2024

O.S.No.819/2022

Plaintiff : Jayalakshamma
W/o Srinivasagowda
aged about 57 years
R/o Mallegowdanakoppalu village,
Ilavala Hobli, Mysuru Taluk,
Mysuru District.

(By Sri.G.S.P,Adv.)

V/s

Defendants :

1. Krishnegowda
S/o Dyavarasegowda
Aged about 69 years,
2. Mahadeva
S/o Krishnegowda
Aged about 49 years,
3. Prasanna
S/o Krishnegowda
Aged about 47 years,

4. Mohana
S/o Krishnegowda
Aged about 45 years,
5. Gangadhara
S/o Subbegowda
Aged about 64 years,
6. Mani
W/o Gangadhara
Aged about 58 years,
7. Kavya
D/o Gangadhara,
Aged about 38 years,
8. Bhavya
D/o Gangadhara,
Aged about 36 years,

All are
R/o Boregowdanakoppalu village,
Hosa Agrahara Hobli,,
K.R.Nagara Taluk,
Mysuru District.

(By Sri.A.N.V., Adv., for D5 & 6)
(D1 to D4- Exparte)

Date of institution of the suit	03.11.2022		
Nature of the suit	Specific Performance		
Date of the commencement of recording of the evidence	14.03.2024		
Date on which the Judgment was Pronounced	14.06.2024		
Total Duration	Year/s	Month/s	Day/s
	01	06	11

(Smt.Arptha K.V.)
II Addl. Civil Judge & J.M.F.C.
K.R.Pete.

JUDGMENT

The Plaintiff has instituted the present suit against the Defendants for relief of Specific Performance of Contract.

2. The Brief facts of the Plaintiff case is:

That the defendants are the absolute owner of the suit schedule property bearing Sy.No.443/1AP1, measuring 1 acre 09.08 guntas, Dry land, situated at Akkihebbalu village, Akkihebbalu Hobli, Krishnarajapate Taluk, Mandya District, bounded on East by: Old Canal, West by: Road, North by: Remaining Land belonging to Seller, South by: Land belonging to Krishnegowda.

3. That the Defendants for the purpose of their daughter's marriage agreed to sell the suit schedule property and executed Agreement of Sale dated 12.02.2014, in favour of the plaintiff for sale consideration of Rs.1,50,000/- and received earnest amount of Rs.1,25,000/- in presence of witnesses and agreed to execute the sale deed as per the terms of said Agreement of Sale by receiving the balance sale consideration and other relevant documents.

4. After execution of Agreement of the Sale, the plaintiff approached the defendants and requested to execute the sale deed by receiving the balance sale consideration amount. In spite of several request the defendants have evaded the request of the plaintiff and have postponed the execution of the sale

deed on one or the other pretext and hence plaintiff got issued legal notice dated 30.09.2021 to the defendants calling upon them to execute registered sale deed in favour of plaintiff before the Sub-Registrar, K.R.Pete on 16.10.2021.

5. Though Defendants No.1, 2, 4 to 6 and 8 have received the said notice have failed to execute the sale deed in favour of the plaintiff and hence the plaintiff was constrained to institute the present suit.

6. Upon service of the summons the the Defendants No.5 to 8 have appeared before the court through their counsel and have filed memo stating to decree the suit as they have no objection to do so. In spite of service of summons the Defendants No.1 to 4, have not appeared before the court and hence were placed exparte. Thereafter the matter was posted for Plaintiff evidence.

7. In order to substantiate the case of the Plaintiff, the plaintiff got examined herself as PW-1 and got marked 11 documents as Ex.P1 to Ex.P11. Further got examined another witness as PW.2. Hence the matter was posted for Arguments.

8. Based on the materials placed on record the following points arise for consideration of this court:-

POINTS

1. Whether the Plaintiff proves that the defendants agreed to execute sale deed as per the Agreement of Sale dated 12.02.2014 for sale consideration of Rs.1,50,000/- and received earnest amount of Rs.1,25,000/- before the witnesses?

2. Whether the Plaintiff proves that she is always ready and willing to perform her part of contract?
3. Whether the Plaintiff is entitled for the relief as sought for?
4. What order or decree?

9. Heard and perused materials placed on record, this Court answers the aforesaid points as hereunder:

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

REASONS

10. **Point No.1** : In lieu of section 101 and 103 of the Indian Evidence Act the burden lies on the plaintiff to prove that the defendants are the absolute owner of the suit schedule property and had agreed to sell the same in favour of the Plaintiff for sale consideration of Rs.1,50,000/- by executing an Agreement of Sale dated 12.02.2014, by receiving earnest amount of Rs.1,25,000/- in presence of witnesses and agreed to execute the sale deed after receiving the balance consideration of Rs.25,000/-.

11. To substantiate the case of the plaintiff, the plaintiff got examined herself as PW.1 by filing affidavit in lieu of examination in chief and got marked Ex.P.1 to Ex.P11. Ex.P1 is the Registered Agreement of Sale dated 12.02.2014 executed by the defendants in favour of the plaintiff. Ex.P2 is the Legal Notice dated 30.09.2021, Ex.P3 are the Postal receipts, Ex.P4

to Ex.P8 are the Postal acknowledgments, Ex.P9 is the Unserved Postal Cover, Ex.P9(a) is the Unserved Legal notice, Ex.P10 is the Unserved Postal Cover, Ex.P10(a) is the Unserved Legal notice, Ex.P11 is the RTC.

12. Further the plaintiff also got examined another witness named Narasimhamurthy as PW.2, who is the scribe of Ex.P1. PW.2 has filed his affidavit in lieu of examination in chief and has deposed in consonance with the case of the plaintiff. Further learned counsel for defendants have not cross examined PW.1 and PW.2 to prove the contrary. Hence the evidence adduced by the plaintiff has remained unrebutted.

13. On perusal of Ex.P1, it shows that the Defendants had executed an agreement of sale dated 12.02.2014 in favour of the plaintiff for sale consideration of Rs.1,50,000/- and received earnest amount of Rs1,25,000/- in the presence of witnesses and agreed to execute the sale deed after receiving the relevant documents and the balance amount.

14. In this regard admittedly Ex.P1 is a registered document. It is well settled law that the registered document carries its own presumption. In this regard the reference is made to the decision of the Hon'ble Supreme Court in **Prem Singh and Ors. vs. Birbal and Ors.** wherein the Hon'ble Supreme Court has held that :

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the

presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption.”

15. In accordance with the principle laid down by the Hon'ble Supreme Court in the aforementioned case it can be seen that the onus of proof lies on the defendants to rebut the presumption that Ex.P1 was not validly executed. However in the case on hand the Defendants have not appeared before the court and have not put forth any pleadings or materials on record to rebut the presumption.

16. Ex.P1 being the Registered Agreement of Sale dated 12.02.2014 is undisputed and is validly executed. Such being the case the preponderance of probability would be in favour of the plaintiff herein. Therefore, this court proceeds to answer Point No.1 in the **Affirmative**.

17. **Point No.2** : It is specific contention of the plaintiff that, she was ready and willing to perform her part of contract and to pay the balance consideration amount of Rs.25,000/- to the defendants and same can be seen through Ex.P2 to Ex.P10. It is relevant at this stage to refer to the decision of the Hon'ble Supreme Court in **Aniglase Yohannan vs. Ramlatha, (2005) 7 SCC 534** wherein it is held as follows:

“12. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the

plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.”

18. On perusal of the plaint and the material placed on record which are unchallenged and unrebutted. This court is of the opinion that the plaintiff has proved that the defendants executed Agreement of Sale in her favour. In accordance with the principles laid down by the Hon'ble Supreme Court, this court has carefully perused the pleadings of the plaintiff and Ex.P2 to Ex.P10. Though the plaintiff got issued legal notice as per Ex.P2 dated 30.09.2021 calling upon the defendants to execute the sale deed in her favour by receiving balance sale consideration amount before the Sub-Registrar, K.R.Pete, the defendants have ignored the same and have failed to execute the sale deed. On the basis of the above made observation, it shows that the plaintiff was ready and willing to perform her part of contract. Hence, in view of the above made observation this court proceeds to answer Point No.2 in the **Affirmative**.

19. **Point No.3:** The Defendants No.1 to 4 have not appeared before the court to rebut the case of the plaintiff. Further Defendants No.5 to 8 have no objection with regard to execution of sale deed in favour of the plaintiff. Hence the conduct of the defendants have to be taken into consideration in the present case on hand. Thus until contrary is proved the court is bound to presume that the defendants executed the Agreement of Sale in favour of the plaintiff and have failed to perform their part of contract. Hence plaintiff is entitled for relief as sought for. Accordingly, Point No.3 is answered in the **Affirmative**.

20. **Point No.4.** In view the aforesaid findings this court proceeds to pass the following:-

ORDER

The suit of the Plaintiff is hereby decreed with costs.

The Defendants are hereby directed to execute the Registered sale deed in favour of the Plaintiff by receiving balance sale consideration of Rs.25,000/- within a period of 2 months from the date of this order.

If the Defendants fail to execute the Registered Sale Deed by receiving the balance sale consideration of Rs.25,000/-, the plaintiff is hereby by directed to get the Sale Deed registered in accordance with law.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed by him, corrected by me and then pronounced in the open Court on 14th June 2024)

(Arpitha K.V.)
II Addl. Civil Judge & JMFC.,
K.R.Pete.

ANNEXURE

List of witnesses examined by Plaintiff:

PW-1	:	Jayalakshamma
PW-2	:	Narasimhamurthy

List of documents exhibited by Plaintiff:

Ex.P.1	:	Agreement of sale dated 12.02.2014
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Ex.P1(a) to 1(h) :	Signatures of defendants, Scribe and Witnesses
Ex.P.2 :	Legal Notice
Ex.P.3 :	Postal Receipts
Ex.P.4 to 8 :	Postal Acknowledgments
Ex.P.9 :	Unserved Postal cover
Ex.P.9(a) :	Unserved Legal Notice
Ex.P.10 :	Unserved Postal cover
Ex.P.10(a) :	Unserved Legal Notice
Ex.P.11 :	RTC

List of witnesses examined by Defendants:

- NIL -

List of documents exhibited by Defendants:

- NIL -

**II Addl. Civil Judge & JMFC.,
K.R.Pete.**