

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

Present :- Sri. V.HANUMANTHAPPA.M.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
Pavagada.

: ORIGINAL SUIT No: 56/2015:

Dated this 31st day of January, 2020.

Plaintiff : S.R.Surya Prakash,
S/o Late S.K.Ramakrishna setty,
Aged about 57 years,
R/o Near Sree Kanyakaparameshwari Temple
(SKP), Pavagada Town, Pavagada Taluk.

(by Sri.DRR Advocate)

V/s

Defendants:1. P.T.Nanjunda Swamy
S/o P.L.Thippeswamy,
Aged about 51 years,
Kuruba by caste,
R/o Rainguage Extension,
Pavagada Town, Pavagada Taluk.
2. P.N.Manjula W/o P.T.Nanjunda
Aged about 48 years,
Kuruba by caste,
R/o Rainguage Extension,
Pavagada Town, Pavagada Taluk.

(Sri.JMM, Advocate for Def, No.1 and 2)

Date of institution of the suit : 06-08-2015

Nature of the suit : Specific performance

Date of commencement of
Recording of evidence : 08-09-2017.

Date on which the Judgment
was pronounced : 31-01-2020

Duration : Year/s Month/s day/s
04 05 25

(V.HANUMANTHAPPA)
Senior Civil Judge and JMFC.,
Pavagada.

:: JUDGEMENT ::

This suit filed by the plaintiff against the defendants for the relief of specific performance of contract.

2. The case of the plaintiff may be stated as follows:-

The defendant No.1 and 2 are the lawful owner in possession and enjoyment of the suit schedule property, the defendant No.1 and 2 have executed agreement of sale dated : 03.10.2012 infavour of the plaintiff for valuable consideration of Rs.93,75,000/-, out of which Rs.30,00,000/- was paid as part consideration amount, the defendant No.1 and 2 have executed the sale agreement on that day and also agreed to receive Rs.30,00,000/- within six months from the date of the execution of sale agreement, and the remaining sale consideration of Rs.33,75,000/- was to be paid before 3.10.2013 and to execute the registered sale deed. The

plaintiff has demanded the defendants several times to execute the registered sale deed by receiving balance sale consideration amount, for which they managed to postpone the same on one or the other grounds and were attempting to alienate the suit property to some other persons, hence, the plaintiff got issued legal notice dated : 25-04-2014 the same was served on them, inspite of it the defendant No.1 and 2 have not come forwarded to execute the registered sale deed. The plaintiff is always ready and willing to perform his part of contract. Since, the defendants have not complied to execute the registered sale deed, the plaintiff has filed the suit for specific performance of contract and accordingly pray for decree the same.

3. In pursuance of the summons the defendants have appeared before the court through their counsel and have filed their written statement. In the written statement they have admitted their ownership over the suit property but they have denied the averments made in the plaint as false and untenable. The defendant No.1 and 2 have taken specific defense that they have not executed any sale agreement infavour of the plaintiff. They have admitted the issuance of legal notice by the plaintiff but the said notice was suitably replied through reply notice through their counsel by saying that, the alleged sale agreement is created and fraudulent document. They have also contended that the suit property is

the joint family property of the defendants and they children, the defendants never faced financial problem, there was no necessity for them to sell the suit property. The plaintiff and the defendants known to each other, there was case pending in No.7/2003-04 before DDLR at Bangalore joint commissioner and appeal No.95/2013 at Tumakur. The Joint commissioner for Land records as passed an order to rectify the extent on 17.4.2005, the plaintiff assisted the defendant No.1 in that case till 2012 during that time the plaintiff used to take the signature of the defendants on plain paper, the plaintiff might have used the said papers to create the alleged sale agreement to have wrong full gain. The replay notice issued by the defendants was not received by the counsel for the plaintiff, it shows the plaintiff has created the sale agreement. Accordingly they pray for dismissal of the suit with cost.

4. On the basis of the pleadings I have framed the following:-

ISSUES

- 1) Whether the plaintiff proves that defendants jointly agreed to sell the suit schedule property to the plaintiff for Rs.93,75,000-00 by executing a sale agreement dated 03.10.2012 and received Rs.30,00,000-00?
- 2) Whether the plaintiff proves that he was ready and willing to perform his part of agreement?

- 3) Whether the plaintiff is entitled for relief specific performance of contract?
- 4) What order or decree?

5. In order prove the case of the plaintiff, the SPA holder of the plaintiff has been examined as PW-1, and 2 supporting witnesses have been examined as PW-2 and 3 and documents marked from Ex. P-1 to 10 and closed his side evidence. On behalf of the defendants the defendant No.2 examined as DW-1 and one witness examined as DW-2 and documents got marked as Ex.D-1 and 30 and closed their side evidence.

6. I have heard the arguments of the learned Advocate for the plaintiff. The counsel for the defendant has filed his written arguments which is replica of pleadings, issues oral and documentary evidence and very much relied on that PW1 is not the original plaintiff, he has admitted that he was not present on the date of said sale agreement hence, his evidence cannot be believed, it is also his contention that the scribe who is examined as PW3 has deposed that the defendants have not signed in his presence and no consideration was passed, PW2 is only person who is the friend of the plaintiff has deposed the alleged transaction but he is having financial transaction with the plaintiff and hence, he is an interested witness, the plaintiff has not chosen to cross examine the DW1 hence, evidence of DW1

remained un challenged hence, he pray for dismissal of the suit . I have gone through the pleadings, evidence as well as the arguments submitted by Advocates.

7. My answer to above issues as follows;-

Issue No.1	:	In the Affirmative
Issue No.2	:	In the Affirmative
Issue No.3	:	In the Partly Affirmative
Issue No.4	:	As per the final order for the following.

:: REASONS ::

8. Issue No.1 :- Burden is on the plaintiff to prove this issue. Before going to discussed the case on merits I would like to point out the admitted facts. The ownership of the defendants over the suit property is admitted. Though the defendants have denied the execution of the sale agreement but their signatures found on the sale agreement was not disputed as in their written statement at Para No.11 the specifically contended that the plaintiff and the defendants known to each other, there was case pending in No.7/2003-04 before DDLR at Bangalore joint commissioner and appeal No.95/2013 at Tumakur. The Joint commissioner for Land records as passed an order to rectify the extent on 17.4.2005, the plaintiff assisted the defendant No.1 in that case till 2012 during that time the plaintiff used to take the signature of the defendants on plain paper, the plaintiff might have used the said papers to create the alleged sale agreement to have wrong full gain. So, the signature of the defendants found on

Ex.P2 are not disputed. With this background I would like to discussed the fact and evidence of the respective parties.

9. In this case, the ownership and possession of the defendants over the suit property is not disputed, so, even to this day, the defendants are in possession and enjoyment of the suit schedule property.

10. The description of suit property is an agriculture land bearing Sy.No.10 measuring 6 acre 10 guntas out of which dry land measuring 1 acre 32 guntas situated at, Pavagada kasaba hobli, Pavagada Taluk.

11. Admittedly, the original plaintiff is not examined but, his son by name Nithin.S has been examined as PW1 as SPA holder of the plaintiff. PW-1 in his affidavit filed in lieu of chief examination has reiterated the contents of the plaint. He has also produced the documentary evidence marked from Ex.P-1 to 10.

12. Ex.P1 is special power of attorney executed by the plaintiff infavour of his son Nithin. S.P to conduct the case on behalf of the plaintiff, he has executed this document by showing the reasons due to his personal inconvenience for family problems due to illhealth and due to dumbness he could not come and give evidence, hence, he has executed this document. Though PW1 has not produced the medical certificates to show the disability of the plaintiff but in his evidence he has categorically deposed that his father

(plaintiff) is suffering from dumbness. Since, this document executed before the notary public in accordance with law on 19.7.2017, therefore, the said document is having presumptive value U/s 85 of Evidence Act.

13. Ex.P-2 is sale agreement dated: 3.10.2012 executed by the defendant No.1 and 2. In the evidence PW-1, he has identified the signature of the defendant No. 1 and 2 and the signature of the defendant No.1 is marked as Ex.P2 (a) and (c), the signature of the defendant No.2. is marked as Ex.P.2 (b) and (c) the signature of witnesses by name Sudhakar Reddy is marked as Ex.P2(e)) the signature of witnesses by name Venkatesh rao is marked as Ex.P2(f) the signature of witnesses by name G.Chithappa is marked as Ex.P2(g) the signature of witnesses by name G.Balavaradharaju is marked as Ex.P2(h) the signature of the scribe by name Ramajinaik is marked as Ex.P2 (j). Ex.P3 is the RTC extract of the suit schedule property measuring total extent 6 acre 20 guntas in Sy.No.10 of Pavagada, out of which the name of the defendant no.1 is entered to an extent 1 acre 32 guntas. The name of the defendant No.1 entered under M.R.No.16/2005-06 under purchase dated 12.09.2005. The name of the plaintiff is also entered to an extent 2 acre 24 guntas in the same survey number which has purchased. The remaining 2 acre 30 guntas is standing in the name of one Lakshimi kanthamma W/o M.S.Janardhan Setty this documents

discloses the defendant No.1 is the owner which has purchased. Therefore, the contention of the defendants that the suit property is the joint family property of the defendants family is not acceptable one. The defendant No.1 being the absolute owner of the suit property has got every right to deal with the said property. Ex.P4 is the legal notice dated 25.04.2014 issued by the Counsel for the plaintiff to the defendants by narrating the case of the plaintiff and directed the defendants to execute the register sale deed within 15 days from the date of recital of the legal notice. Ex.P5 and 6 are the acknowledgements for having service of the notice on the defendants.

14. On perusal of the cross examination of PW1, the learned counsel for the defendants has conducted marathon cross examination, Para No.1 of the cross examination is with regarding to family members of the plaintiff, Para No.2 is with regarding to properties belongs to the family of the plaintiff, Para No.3 and 4 are with regarding the avocation and studies of the family members of the plaintiff, Para No.5 is with regarding to disabilities of the plaintiff in which the plaintiff has been suffering from dumbness from 2015. in the further cross examination of PW-1 dated 16-01-2018. he has deposed that the sale agreement was executed on 03-10-2012 which contains 4 pages, the venders, the purchaser and 4 witnesses as well as the scribe of the document have signed

to the said sale agreement. The defendants and witnesses have signed in English language, witness Sudhakar reddy is of Roppa village, Venkatarao is of C.K.Pura village, Balavaradaraju is of Kadapalakunte village, Chithappa is of Maddibande village, he knows the witnesses Sudhakar Reddy and Chithappa. He further deposed that the witnesses signed in page No.3 of the document. He has admitted that he was not present at time of execution of the sale agreement and hence he had no person knowledge about it. He has deposed one Ramanji Naik was the scribe who prepared the Ex.P-2. He has express his ignorance regarding where the stamp paper was purchased. He has further deposed that there were two conditions mentioned in the sale agreement, the 1st condition is if the remaining consideration amount was not paid within time fixed in it, the agreement would canceled and the 2nd condition is in the event of payment of the amount if the defendants have not come forwarded to execute the sale deed the plaintiff can approach the court of law to get decree. He has expressed his ignorance from where his father get the 30 Lakh. The said amount paid to the defendants in the house of the plaintiff. He has deposed the boundaries of the suit property. he has also admitted his father filed a petition for measuring the lands before the court of DDLR Tumakuru. The further cross examination is with regarding

to suggestion of the defence taken by the defendants which is denied by him with regarding to execution of Ex.P-2 .

15. In support of the contention of the plaintiff, the witness by name C. Chithappa who is the attesting witness to Ex.P-2 is examined as PW-2. In his affidavit filed in lieu of chief examination he has also reiterated the averments of the plaint with regarding to execution of sale agreement by the defendant No.1 and 2 in favour of the plaintiff and passing of consideration of amount. He has also identified the signatures of the defendants, the signatures of the witnesses and scribe. This witness also elaborately cross examined by the counsel for the defendants. In the cross examination he deposed , he signed in English language, he is working as farmer, possessing 12 acres of land. He knows the plaintiff and defendants, the suit property is 32 guntas in Sy.No.10. he has also deposed that the plaintiff possessed land in Sy.No.9 and 10 of Pavagada which was sold by him. On 03-10-2012 he came near Taluk Office of Pavagada at about 10-30 a.m on the request of the plaintiff, before his arrival the witnesses Sudhakar Reddy, Balavardaraju and Venkateshrao, defendants, the plaintiff were came there. From plaintiff side, he and the plaintiff came there. He doesn't know about the previous sale talks between the plaintiffs and defendant. On the date of the sale agreement, the defendant No.1 took the stamp paper worth of Rs.500/-,

it was typed in computer at about 11.45 a.m, during that time the defendant No.1 was brought the RTC , Mutation and other documents of the suit property, he has not verified as to how the defendant No.1 has got the said property. the scribe Ramanji Naik prepared Ex.P-2. along with him the other witnesses signed to Ex.P-2 in English language first Sudhakar Reddy, secondly Venkateshrao, thirdly Balavardharaju have signed to Ex.P-2 the defendants signed to Ex.P-2 and even the plaintiff also signed to it. in the cross examination also he has identified the said signatures. He has categorically deposed that the witnesses signed in the additional Rs.2/- document sheet which is attached to the stamp paper. He has also deposed Rs.30,00,000/- given to defendants as an advance, it is also mentioned that second installment should be Rs.30,00,000/- and the third installment would be Rs.33,75,000/- the said consideration amount should be paid within one year. He has categorically deposed that at the time of passing of consideration he, the other witnesses, the plaintiff and defendants were present. He further deposed, after getting type of Ex.P-2 all of them have been to the house of the plaintiff where the plaintiff has given Rs.1,000/- notes worth of Rs.30,00,000/-, the defendants count the said amount. It is suggested the witnesses signed to Ex.P-2 since the space was not available to sign by this

witness hence he signed some where in it. This suggestion denied by him.

16. The scribe by name Ramanji Naik is examined as PW-3, in the chief examination he has deposed that the defendant have executed the Ex.P-2 infavour of the plaintiff he has identified the signatures of the defendants found on Ex.P-2 which are already marked as Ex.P-2 (a) to (d). He has also identified his signature which is marked as Ex.P-2 (j) he further deposed the plaintiff got the signature of the witnesses to Ex.P-2 he has also deposed in his presence the plaintiff told that Rs.30,00,000/- paid by the plaintiff to the defendants but according to him no consideration amount was passed in his presence. In the cross examination he deposed Ex.P-2 was prepared in the year 2012 but he is unable to depose the actual date of its execution. He deposed the defendants have not signed in his presence. The plaintiff brought the stamp paper of Rs.500/- and RTC extract. He has not re collect the time and the contents of Ex.P-2, he has also not say in how many pages Ex.P-2 was prepared. He has deposed that Ex.P-2 was typed in Navodaya Computer Centre, at Pavagada. He further deposed the registers maintained by him would submit to Sub-Registrar every year and hence he could not produced it. He has also deposed that the defendants have not signed in his presence.

17. In this case the second defendant examined as DW-1 and documents marked from Ex.D1 to 30. In her affidavit filed in lieu of chief examination she has re iterated the averments the written statements. The documents produced on her behalf are Ex.D1 to 30.

18. Ex.D1 is the reply notice dated 17-05-2014 issued by the defendants to counsel for the plaintiff in the said notice they have denied the averments of the notice issued by the plaintiff and they have set up the defence which they have taken in their statement.

19. Ex.D2 is the postal receipt and Ex.D3 is unclaimed postal cover returned to the counsel for the defendants, Ex.D3(a) is the replay notice which is the copy of Ex.D1 . Ex.D-4 and 5 the RTC extract of the suit property the same is also produced by the plaintiff at marked as Ex.P-3. Ex.D6 is Mutation extract, it appears the defendant No.1 purchased the suit property from one Narasamma W/o Venkatachalapathi. Ex.D-7 is copy of encumbrance certificate from 01-04-2007 to 05-05-2014, it appears the defendant No.1 has lease out the suit property in favour of one Seva Naik on 11-09-2007 , there is no recital regarding release of the said lease. Ex.D-8 is the tax paid receipt dated 23-07-2014, the defendant No.1 paid tax in respect of suit property. Ex.D-9 is Village Form No.4 in respect of suit property standing in name of defendant No.1. Ex.D10 is the certified

copy of orders passed in the appeal No. 95/2013-14 dated 23-07-2018 filed by the present plaintiff against the Tahasildar and others, the defendant No.1 was the respondent No.1 in the said appeal. It was challenged with regarding to Durasth of Sy.No.9 and 10. After enquiry the DDLR as set aside the Hissa Podi of Sy.No.9 and 10 of Pavagada and remand the matter who ADLR for fresh Survey of the land in accordance with law. Ex.D11 is the certified copy of the order sheet in the said appeal No.95/2013-14. Ex.D-12 is the petition, Ex.D-13 is objections, Ex.D14 is the certified copy of application filed U/o 1 Rule 10 of CPC filed by one Lakshmikanthamma and the defendant No.1 herein, Ex.D-15 is the objections of respondent No.3, 9 and 11 to the main petition, Ex.D-16 to 18 are written arguments of the respective parties, Ex.D-19 is also the impleading applications. Ex.D10 to 19 are in respect the above said appeal No.95/2013-14. Ex.D-20 is the consent letter executed by the defendants herein to the A.C Madhugiri consent in for measuring the lands as per the orders. Ex.D-21 is the proceedings of the learned A.C. Madhugiri in case No. RRTCR 467/2014-15, it appears the Mutation passed in MR No.73/95-96 , MR No.16/2005-06 and MR No.54/2005-06 are set aside and directed the Tahasildar Pavagada to enter the name as per the orders. Ex.D-22 is the application addressed to the D.C. Tumakuru by the Tahasildar Pavagada

with regarding to conversion of the suit property for non agriculture papoose. Ex.D-23 is letter dated 02-12-2019 issued by the defendant No.1 to the manager Sri. Matha Co-operative Society, Pavagada to give information regarding purchase of stamp paper in the name of the plaintiff and defendants and he sought for giving information about the person who filed application for purchase of the said stamp paper. Ex.D-24 is the information letter given by the said society stating that the stamp paper dated 03-10-2012 was not purchased in the name of defendant No.1. Ex.D-25 is certified copy of registered sale deed executed by S.K. Ramakrishna Shetty and his sons in favour of the present plaintiff in respect of Sy.No.9 to an extent 2 acre 28 gunta. This document is not disputed document. Ex.D-26 is certified copy of registered sale deed executed by Devaramma in favour of the present plaintiff in respect of Sy.No.10 to an extent 2 acre 24 gunta. This document is not disputed document. Ex.D-27 is certified copy of registered sale deed executed by plaintiff infavour of one K. V. Ramanatha Shetty in respect of Sy.No.9/6 to an extent 2 acre 32 guntas out of which 25.8 guntas. This document is not disputed document. Ex.D-28 is certified copy of registered sale deed executed by plaintiff in favour of one Sayed Farooq and others in respect of Sy.No.9/12 to an extent 1 acre 28 guntas. This document is not disputed document.

20. Ex.D-29 is the receipt with regarding to purchase of E-Stamp paper purchased in the name of the plaintiff, the first party is the plaintiff and the second party is the defendants. Ex.D-30 is E-stamping list of all certificates report dated 03-10-2012 of the said society, it appears, the plaintiff purchased E-stamping paper at Sl. No.6.

21. In support the defence with regarding to non purchase of E-stamp paper by the defendants they have summoned the manager by name SriLakshmi of the above said society and examined her as DW-2. In her chief examination she deposed Ex.D-29 the application form submitted by the plaintiff on 03-10-2012 to purchase the stamp paper, the first party is the plaintiff, second party is defendants. In the cross examination she has admitted that while purchasing the stamp papers either the purchaser or the vendor may purchase the same, either of them have to file an application to purchase the stamp paper.

22. In this case no doubt DW-1 has not been cross examined by the plaintiff in spite of providing sufficient opportunities but it is not only the sole ground to reject the claim of the plaintiff. As I have already discussed above that the title of the defendants over the suit property is not disputed. Even though the defendants have denied the execution of Ex.P-2 but they have not seriously disputed their signatures found on Ex.P-2. the defendants have specifically

contended that while conducting proceedings before the DDLR Court, the plaintiff has taken their signatures on blank papers and make use of it by creating the sale agreement. The defendant No.1 and 2 are not an illiterate persons in the cross examination of PW-1 they have suggested that they are running a convent and school, so they are well educated people having full knowledge about the documents. No provident man will signed to a blank papers unless he has faith on the person who obtained it. In this case the plaintiff and the defendants are known persons both of them are having their respective properties in the same Sy.No.9. When the defendants admitted their signature on Ex.P-2 it is for them to prove that the said signatures were taken on the blank papers. If really their signatures were taken on blank papers, soon after receiving the notice from the counsel for the plaintiff, they have not taken any legal action by lodging a complaint against the plaintiff before the police or the court by stating the allegations made by them against the plaintiff. Merely because the defence taken is not sufficient. The witness PW-2 has categorically deposed about the sale transaction and passing of the consideration from the plaintiff to the defendants and he has also deposed the execution of Ex.P-2 by the defendants. Though PW-3 scribe has deposed in the chief examination on oath before the court in the witness box with regarding to execution of Ex.P-2 by

the defendants in favour of the plaintiff and passing of part consideration amount of Rs.30,00,000/- but in the cross examination he has taken different view that the defendants have not signed to Ex.P-2 and no consideration amount passed in his presence. Though there is some disturbance in the cross examination of PW-3 but he has deposed that he has prepared the Ex.P-2 on the request of the plaintiff. Since the defendants have not disputed the signatures, therefore the entire evidence of PW-3 cannot be discarded but the portion support to the case of the plaintiff may be taken into consideration accordingly I have considered his evidence partially with regarding to preparing the Ex.P-2 by him and the signatures found on it are belongs to the defendants and witnesses. Since PW-2 deposed regarding passing of consideration to the defendants which taken place in the house of the plaintiff. He deposed 30 bundles of containing Rs.1,000/- notes in total Rs.30,00,000/- consideration amount passed to the defendants. Here it is important to note that the parties to the suit are well known persons, the witness PW-2 is also known to them and even there was cases before the DDLR regarding re-survey of their lands, the defendant have also consent for re-survey of the lands. under such circumstances there is no chances of creating the documents by the plaintiff in the names of the defendants. They defendants have contended that they were having

sufficient source of income on the date of execution of Ex.P-2 but they have not produced their Bank Account extract to show their financial capacity. Considering all the aspects of the case I am of the considerable opinion that the defendants have entered into agreement of sale with the plaintiff agreeing to sale the suit property for consideration amount mentioned in Ex.P-2. The plaintiff has also proved that the advance of Rs. 30,00,000/- was received by the defendants as a part payment. Therefore I have no reasons to disbelieve the case of the plaintiff with regarding to these aspects. Hence I answer to this **issue is the Affirmative.**

23. Issue No.2 :- Burden is on the plaintiff to prove this issue. Merely because the plaintiff proved the execution of Ex.P-2 is not sufficient to entitle the relief of specific performance but he has also to prove, his readiness and willingness to perform his part of contract. In this case Ex.P-2 was executed on 03-10-2012. the sale consideration amount was fixed for Rs.93,75,000/- out of the said amount, Rs.30,00,000/- paid as advance amount and under take to pay the second installment of Rs.30,00,000/- within 6 months and the remaining Rs.33,75,000/- will have to pay within 03-10-2013. So the time limit fixed that within one year from the date of execution of Ex.P-2 the plaintiff shall perform his part of contract. As per the recitals of Ex.P-2 the legal notice dated 25-04-2014, the plaintiff has not

mentioned regarding payment of the second installment within 6 months from 03-10-2012 but the recitals discloses the defendant were not ready with the documents to execute the registered sale deed. The plaintiff has produced Ex.P-7 which is the copy of Band dated 05-08-2019 by showing that Rs.71,51,000/- was deposited in Kaveri Grameena Bank in the name of the plaintiff. Ex.P-8 is the Bank Account extract of the plaintiff dated 20-01-2018 , it was from 12-07-1994 to 16-01-2018. the relevant time for consideration is 6 months period from 03-10-2012. On perusal of the statement from 28-02-2013 to 16-01-2014 there was Rs.4,877/- in the account of the plaintiff but as on 17-01-2014 he has deposited Rs.50,00,000/- to his account. But as on 03-10-2013 the plaintiff has no such amount of Rs.63,75,000/- in his account. But the defendants who were also the persons having equal obligation to demand the plaintiff to pay the remaining consideration amount within the time mentioned in Ex.P-2 by producing the relevant documents. The documents produced by the defendants discloses in the year of 2013-14 there was dispute before DDLR court so it appears the defendants were not ready with the documents to execute the registered sale deed. Because of the documents were not ready the parties would not perform their part of contract. The defendant have produced the certified copies of registered sale deeds executed by the plaintiff to show that he

was not having sufficient amount to perform his part of contract but because of the dispute before the DDLR he was not issued the notice. However the plaintiff has issued legal notice within three years from date of execution of Ex.P-2 calling upon the defendants to execute registered sale deed.

24. The learned counsel for the defendants has relayed on certain Judgments with regarding to Sec. 16 (1) (c) of specific relief Act. Which are ILR 2006 KAR 3989 between S.Kugashankar V/s Subhash Chandra Goel and others. ILR 2007 KAR 3014 between B.Puttaswamy V/s Joseph. D' Cruez and others, 2009 (1) Property Law Decisions 651 (Chtt) between Anil singh V/s Smt. Kholbaharin bai and another, AIR 2014 Phatna 39 between Rama Bahadur Rai V/s Bishwa Nath Rai. I have gone through the said judgments, in the decision of ILR 2006 Karnataka 3689 at Para No.29 his lordship observed that 'while doing so, the learned trial judge has ignored clause 6 of agreements wherein he was required to perform his obligation, as stated in the foregoing paragraphs to apply for permission from Urban Land Ceiling as per the date of agreement till the provision of Section 27 was struck down or that they had informed 1st defendant he was willing to pay balance sale consideration to complete to sale transaction thus, the conclusion arrived by the learned trial judge that the plaintiff has proved that he was ready and willing to perform his part of contract is erroneous in law as

same is contrary to evidence on record. Though in the present case on hand the time was fixed but, the suit filed within three years from the date of execution of the document and the plaintiff has furnished his bank statements to show that he was having sufficient amount. Since, the defendants were not get survey of the lands and litigation was pending before the DDLR court, but subsequently, the plaintiff has pleaded and proved that he has been ready and willing to perform of his contract. therefore, with due respect to the above said decision, which are not applicable to the present facts of the case. Hence, I answer to this **issue is in the Affirmative.**

25. **Issue No.3 :-** Since the plaintiff has proved the Issue No.1 and 2 hence the plaintiff is entitled the relief. But Section 20 of Specific Relief Act contemplates that Discretion as to decreeing specific performance.—

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that

the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance. Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Explanation 2.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

26. On perusal of the documentary evidence, it is clear that the plaintiff was also having his property in Sy.No.9 measuring to extent 2 acre 24 guntas, subsequently, he has

alienated the same, so it is clear that he is not an intention to do agricultural in the lands, if at all his intention in purchase of the suit property was for agricultural purpose he would not have sold his property before getting registration of the suit schedule property. On the other hand the defendants are running a convent/school near the suit property and they had also contended that the same is their joint family property and even the cross examination of PW1 it was suggested that 'the defendants are going to construct convent in the suit property, which effect to the convent of one Anil Kumar and hence, with the instigation of the said Anil Kumar the preset suit filed' this portion of suggestion clear go to show that the requirement of the suit property is more necessary to the defendants than the plaintiff, therefore, I am of the view that instated of granting the relief of specific performance it is just and necessary to order for refund of earnest money.

27. In this case the plaintiff has not sought for alternative relief of refund of earnest money however, in the decision of Our Hon'ble High Court of Karnataka in a decision of Khamarunnisa v/s Mudalappa, it is held that

28. "The suit is one for specific performance and the relief of return of earnest money was not even pleaded in the suit. The relief is being granted by the Court on application of general principles of law to the case. The agreement is

executed on 6-8-1983 and no specific date was fixed for its performance. The plaintiff could have had notice of refusal of performance by the defendant only on or after 3-12-1990 when the notices issued by him, one by registered post and another by certificate of posting, evoked no reply from the defendant. As the plaintiff can be given the relief of return of earnest money in a suit for specific performance in exercise of the discretionary power, without there being a specific pleading to that effect, the period of limitation would begin to run from the date of refusal by the defendant. As the suit is filed in the year 1991 itself after issuance of notice on 3-12-1990, it must be held that under Article 113 of the Limitation Act the claim for earnest money is not time-barred. Therefore, the ratio of the decision in S.M.Patel, supra, is of no assistance to the defendant in this case

29. Thus, in the ultimate analysis, I have to hold that the appellant though is not entitled for the relief of specific performance or for damages in substitution of specific performance, is certainly entitled to get back the earnest money paid by him under the agreement even in the absence of a plea in the plaint in that regard. It is trite law that no man should be allowed to gain out of his own default.

30. In the result, for the reasons stated above, the appeal is partly allowed. The suit is decreed for return of earnest money paid under the agreement and the

respondent-defendant is directed to repay the earnest money received by him from the appellant with simple interest at 6% per annum from the date of agreement till the realization of the sum by the appellant-plaintiff”.

31. Therefore, in this case also, though the plaintiff has not sought for refund of earnest money but, by using discretion power U/o 20 of Specific Relief Act, it is just and necessary to order for refund of earnest money. Accordingly, I answer to this **issue is in the partly Affirmative.**

32. Issue No.4. In view of my above discussion I proceed to pass following;-

:: ORDER ::

Suit of the plaintiff is hereby decreed in part with cost.

The relief sought for specific performance is hereby rejected by modifying that the plaintiff is entitle the refund of earnest money with interest at the rate of Rs.6% per annum from the date of suit till the date realization.

Draw decree accordingly.

(Dictated to the Stenographer, directed typed by him, corrected, initialed and pronounced by me in the open court on this the 31st day of January, 2020)

(V.HANUMANTHAPPA)
Senior Civil Judge & JMFC,
Pavagada.

ANNEXURE**WITNESSES EXAMINED FOR THE PLAINTIFF:**

PW-1 : Nithin.S
PW-2 : C.Chithappa
PW-3 : Ramji Naik

DOCUMENT EXHIBITED FOR THE PLAINTIFF:

Ex.P-1 : Special power of attorney,
Ex.P2 : sale deed
Ex.P2 (a to j) : signatures
Ex.P3 : RTC
Ex.P4 : O/c of legal notice
Ex.P5 & 6 : 2 postal acknowledgment
Ex.P-7 : copy of FD receipt
Ex.P-8 : Bank statement of account
Ex.P-9 : Bank statement of account
Ex.P-10 : Bank statement of account

WITNESSES EXAMINED FOR THE DEFENDANTS:

DW-1 : Smt. Manjula
DW-2 : Smt. SriLakshmi

DOCUMENT EXHIBITED FOR THE DEFENDANTS:

Ex.D-1 : O/c of legal notice
ExD-2 : Postal receipt
Ex.D-3 : post cover
Ex.D-3(a) : Returned copy of notice
Ex.D-4 and 5 : 2 RTC extracts
Ex.D-6 : Mutation extracts
Ex.D-7 : Encumbrance certificates
Ex.D-8 : kandayma receipt
Ex.D-9 : village form No.4 copy
Ex.D-10 : C/c of orders of DDLR court
Ex.D-11 : C/c of order sheet
Ex.D-12 : C/c of appeal memorandum
Ex.D-13 : C/c of objection to appeal
Ex.D-14 : C/c of application U/o 1 R10 of CPC
Ex.D-15 : C/c of objection to application
Ex.D-16 & 17 : 2 C/c of written arguments

- Ex.D-18 : C/c of written arguments of R2 and R8
Ex.D-19 : C/c of application U/o 1 R 10 CPC
Ex.D-20 : C/o of compromise letter
Ex.D-21 : C/c of orders in RRT Cr.467/14-15
Ex.D-22 : Tahasildar requested modification letter Dt:23.2.2010
Ex.D-23 : C/c of application given to Sri. Matha
Vivedoddesha sahakara pathina sanga
Ex.D-24 : C/c of endorsement
Ex.D-25 : C/c of sale deed Dt: 10.04.2003
Ex.D-26 : C/c of sale deed Dt: 15.7.2003
Ex.D-27 : C/c of sale deed Dt: 19.8.2010
Ex.D-28 : C/c of sale deed Dt: 23.06.2014
Ex.D-29 : Application form for purchasing stamp paper DW2.
Ex.D-30 : E. stamp sale register extract.

(V.HANUMANTHAPPA)
Senior Civil Judge & JMFC,
Pavagada.