



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JULY, 2023

BEFORE

THE HON'BLE DR. JUSTICE H.B.PRABHAKARA SASTRY

REGULAR FIRST APPEAL NO.1095 OF 2017 (SP)

BETWEEN:

SRI S.SELVARAJ
S/O.LATE SINGARAM
AGED ABOUT 76 YEARS
R/AT DR.B.R.AMBEDKAR ROAD
ROBERTSONPET POST
K.G.F.-563 122

...APPELLANT

(BY SRI VASANTH V.FERNANDES FOR
SMT.VEENA KUMARI M., ADVOCATES)

AND:

SRI K.BALCHAND
S/O.LATE KIVARAJ
AGED ABOUT 46 YEARS
R/AT S.R.BUILDING ROAD
ANDERSONPET POST
K.G.F-563 113

...RESPONDENT

(BY SRI T.SRINIVASAN, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 AND ORDER XLI RULE 1 OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO CALL FOR THE RECORDS, SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 27/03/2017 PASSED BY THE SENIOR CIVIL JUDGE AND PRINCIPAL J.M.F.C., K.G.F. IN O.S.NO.51/2014 AND GRANT SUCH OTHER RELIEFS DEEMED FIT TO GRANT IN THE

CIRCUMSTANCES OF THE CASE, INCLUDING COSTS, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD THROUGH PHYSICAL HEARING/VIDEO CONFERENCING HEARING AND RESERVED ON **23-06-2023**, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

This is a defendants' appeal. The present respondent as a plaintiff had instituted a suit against the present appellant, arraigning him as defendant in O.S.No.51/2014, in the Court of the learned Senior Civil Judge and Principal J.M.F.C. at K.G.F. (hereinafter for brevity referred to as "Trial Court"), seeking specific performance of a contract.

2. The summary of the case of the plaintiff in the Trial Court was that, the defendant has offered him to sell the suit schedule property to meet his legal and financial necessity and clear family debt. Accordingly, the negotiation took place between them on 05.09.2012. It was agreed in the negotiation that the defendant should sell the suit schedule property to the plaintiff for a total consideration of a sum of ₹14,00,000/-. In that regard,

both the plaintiff and the defendant entered into an agreement for sale on 27.03.2013, on the same day, the plaintiff paid an advance consideration in the sale value of a sum of ₹10,00,000/- to the defendant, which the defendant acknowledged. It was agreed between the parties that the defendant should execute the sale deed and register it in favour of the plaintiff within three months from the date of the agreement for sale after receiving the balance sale consideration of a sum of ₹4,00,000/-. The defendant also agreed to handover the original documents as on the date of registration of sale deed.

It is the further case of the plaintiff that though he was ready and willing to perform his part of the contract, however, the defendant did not come forward to execute and register a sale deed in his favour. The plaintiff repeatedly requested and demanded the defendant to receive the balance sale consideration and execute the registered sale deed. Since the defendant did not respond favourably, the plaintiff got issued a legal notice dated 10.10.2013 calling upon him to perform his part of

obligation under the agreement for sale. However, the said notice returned unserved with an endorsement as 'the addressee left without intimation hence return to the sender'. The plaintiff once again sent a notice on 23.06.2014 to the address of the defendant at Bengaluru. The said notice also returned unserved with an endorsement as 'intimation issued'. Since the defendant failed to receive the notice, the plaintiff got issued a reminder notice on 12.07.2014. The said notice was served upon the defendant. Still the defendant failed to comply the demand made in the notice. With this, the plaintiff contended that though he has always been ready and willing to perform his part of the obligation under the agreement, however, the defendant failed to perform his part of the contract and this constrained him to file a civil suit against the defendant. With this, the plaintiff has filed a suit in O.S.No.51/2014 against the defendant (the present appellant).

3. In response to the summons served upon him, the defendant appeared through his counsel and filed his

written statement. In his written statement, the defendant admitted as true that he is the owner in possession and enjoyment of the suit schedule property and that he had purchased the same from his vendor, Sri P.M.Samuel under a registered document for a valuable consideration on 16.04.1977. He also admitted that thereafter, he put up construction of a dwelling house and shop premises, which is the suit schedule property. However, he denied all other averments made in the plaint as false and concocted. He denied that he had executed an agreement for sale in favour of the plaintiff and had received an advance amount of ₹10,00,000/-. He also denied that a legal notice was issued to him by the plaintiff. He contended that the suit is barred by limitation and there is no cause of action for the suit. He denied that the plaintiff was always ready and willing to perform his part of the contract including getting the sale deed executed within three months. However, the defendant contended that he intended to dispose of the suit schedule property with a sole intention to clear his family debt as per the alleged

agreement, as such, the selling of the property was inevitable and the consideration to clear his family debt and the plaintiff had not fulfilled the said covenant nor payment of amount within three months and thereby, the plaintiff has lost his right to enforce the alleged agreement dated 27.03.2013. He also contended that if the suit of the plaintiff is decreed, he would be put to great hardship and inconvenience. The suit schedule property is the only property for the defendant to reside. With this, he prayed for dismissal of the suit with exemplary costs.

4. Based on the pleadings of the parties, the Trial Court framed the following issues for its consideration:

- "1) *Whether the Plaintiff proves that the defendant has executed an agreement of sale on 27.03.2013 agreeing to sell the suit schedule property in his favour for a valuable sale consideration of Rs.14,00,000/-?*
- 2) *Whether the plaintiff proves that the defendant has received Rs.10,00,000/- as advance against the total sale consideration of Rs.14,00,000/- under the agreement of sale deed dated 27.03.2013?*

- 3) *Whether the plaintiff proves that he has been and always ready and willing to perform his part of the obligation under the agreement of sale dated:27.03.2013?*
- 4) *Whether the defendant proves that the suit is barred by Limitation?*
- 5) *Whether the defendant proves that the agreement of sale dated 27.03.2013 is unenforceable for the reasons stated in Para 28 of his written statement?*
- 6) *Whether the plaintiff is entitled for the relief of specific performance of agreement of sale dated 27.03.2013 in respect of suit schedule property?*
- 7) *What Order/decrees?"*

5. In support of his plaint, the plaintiff got himself examined as PW.1 and got examined two more witnesses from his side as PW.2 and PW.3 and got marked documents from Exs.P1 to P8. On behalf of the defendant, the defendant got himself examined as DW-1. However, no documents are produced.

6. After hearing both side, the Trial Court by its impugned judgment and decree dated 27.03.2017, while answering issue Nos.1, 2, 3 and 6 in the affirmative and

issue Nos.4 and 5 in the negative, decreed the suit of the plaintiff and directed the defendant to execute and register a regular sale deed in respect of the suit schedule property within three months from the date of the judgment by receiving the balance sale consideration of a sum of ₹4,00,000/-. Aggrieved by the same, the defendant in the Trial Court has preferred the present appeal.

7. The Trial Court records were called for and the same are placed before this Court.

8. Heard the arguments of the learned counsels from both side and perused the material placed before this Court including the memorandum of appeal, the impugned judgment and the Trial Court records in its entirety.

9. For the sake of convenience, the parties would be henceforth referred to as per their rankings before the Trial Court.

10. Learned counsel for the appellant (the defendant) in his argument submitted that, the defendant has disowned the alleged agreement for sale. He also

submitted that the sale consideration is inadequate. The property was worth more than ₹50,00,000/-, as such, the defendant agreeing to sell the said property for a small amount of ₹14,00,000/- is not acceptable. He also stated that the time was stipulated for the performance of the agreement and the said time had already been elapsed before the plaintiff sending the legal notice. Therefore, the plaintiff cannot claim the relief of specific performance. While concluding his argument, the learned counsel submitted that the defendant, even this day, is ready to return the money received by him. With this, he prayed for allowing the appeal.

11. *Per contra*, learned counsel for the respondent (the plaintiff) in his argument submitted that, the defendant has admitted the execution of the agreement and receipt of an advance amount of ₹10,00,000/- by him clearly and specifically in his cross-examination as DW.1. He also submitted that the defendant as DW.1 has admitted the receipt of notice sent to him by the plaintiff. The notice sent to the defendant clearly mentions about

the readiness and willingness of the plaintiff to perform his part of the obligation under the agreement. However, the defendant himself has failed to perform the contract. As such, the plaintiff was rightly entitled for the relief of specific performance, which the Trial Court has rightly considered. Stating that in order to prove his readiness and willingness unless he asked to produce, he need not produce any document showing his Bank balance or financial capacity, the plaintiff relied upon a judgment of the Hon'ble Apex Court in the case of **Basavaraj v. Padmavathi and another** reported in **AIR 2023 SC 282**.

12. In the light of the above, the points that arise for my consideration in this appeal are:

"(i) Whether the plaintiff proves that the defendant has executed an agreement for sale on 27.03.2013 in his favour agreeing to sell the suit schedule property to him for a valuable sale consideration of a sum of ₹14,00,000/-?"

(ii) Whether the plaintiff proves that the defendant had received a sum of ₹10,00,000/- from the plaintiff as an advance amount against the total

sale consideration of a sum of ₹14,00,000/- under the agreement for sale dated 27.03.2013?

(iii) Whether the plaintiff proves that he has always been ready and willing to perform his part of the obligation under the agreement for sale dated 27.03.2013?

(iv) Whether the defendant proves that the agreement for sale dated 27.03.2013 is unenforceable due to the efflux of time of three months mentioned in the agreement?

(v) Whether the impugned judgment and decree warrants any interference at the hands of this Court?"

13. In order to prove his case, the plaintiff got himself examined as PW.1 who in his examination in chief has reiterated the contention taken up by him in his plaint. He has specifically stated that the negotiation and talks with respect to sale of the suit schedule property by the defendant in his favour (of the plaintiff) though took place on 05.09.2012 and it was agreed that the sale consideration was for a sum of ₹14,00,000/-, however, since the defendant stated that he had to obtain the consent of his family members, the agreement for sale came to be executed between them only on 27.03.2013.

He also stated that under the said agreement, he paid a sum of ₹10,00,000/- to the defendant in cash towards partial sale consideration and remaining sum of ₹4,00,000/- was agreed to be paid within a period of three months, within which period, the defendant had to accept the balance sale consideration and to execute the sale deed. The plaintiff also reiterated that though he was ready and willing to perform his part of the obligation, but the defendant did not respond despite his repeated demands and requests. This made him to issue legal notices on three occasions, two of the earlier notices returned unserved, whereas the reminder notice dated 12.07.2014, which was sent through courier service, was served upon the defendant. However, he did not respond to the same. This constrained him to file the suit. He categorically stated that he has always been ready and willing to perform his part of the contract. To substantiate his contention, he got produced and marked the agreement of sale said to have been executed by the defendant in his favour on 27.03.2013 at Ex.P1, identified his signature and that of the defendant in the said

document. He also stated that witnesses were there at the time of the agreement and he has also identified their signatures in Ex.P1. He has produced the copy of the legal notice dated 10.10.2013 at Ex.P2, the returned postal cover carrying the notice dated 10.10.2013 in it at Ex.P4 and the notice sent under the said cover at Ex.P4(a). He has also produced and got marked a copy of the very same legal notice sent to the Bengaluru address of the defendant at Ex.P5, the returned postal cover with the notice in it sent to Bengaluru address of the defendant at Exs.P6 and P6(a) respectively. He has also produced two courier receipts showing sending of the legal notice to the defendant at Exs.P7 and P8 respectively.

14. The plaintiff, in support of his suit, also got examined one Sri K.S.Budhraj as PW.2 and another Sri G.Mani as PW.3.

PW.2, Sri K.S.Budhraj, in his evidence, has stated that he knows both the plaintiff and the defendant. Since the defendant approached him and expressed his desire to sell the suit schedule property, he contacted the plaintiff who was interested in purchasing the property. He being the

mediator, brought the plaintiff and the defendant together and enabled them to negotiate with respect to the sale of the suit schedule property. In the said negotiation, the defendant agreed to sell the suit schedule property to the plaintiff for a total consideration of a sum of ₹14,00,000/-. In that regard, an agreement for sale was entered into on 27.03.2013, wherein the plaintiff paid an advance amount of a sum of ₹10,00,000/- as part consideration of the sale value. He also stated that both parties to the agreement approached an Advocate by name, Sri G.Mani, who verified the title deeds and drafted the agreement for sale. It is thereafter, both the plaintiff and the defendant have signed the agreement for sale in the presence of the witnesses including himself and one Sri Deeptha, the son-in-law of the defendant. The consideration of a sum of ₹10,00,000/- was acknowledged by the defendant. The witness also stated that the plaintiff had always been ready and willing to perform his part of the contract, whereas, the defendant did not execute the sale deed in favour of the plaintiff. The witness identified the agreement for sale at Ex.P1 and his signature therein.

PW.3, Sri G.Mani has stated that he is a practising Advocate and on 27.03.2013, at the desire of the parties to the suit, he drafted an agreement for sale, for the sale of the suit schedule property by the defendant in favour of the plaintiff for a sale consideration of a sum of ₹14,00,000/-. He also stated that on the said date, the plaintiff paid the advance consideration of a sum of ₹10,00,000/- to the defendant, which the defendant has acknowledged. The witness stated that it was him, who drafted the said agreement for sale and it is after he read over the contents of the agreement, both parties to the agreement have subscribed their signatures to the same. The witness has identified the said document at Ex.P1, the signatures of the parties to the agreement therein and also his signature at Ex.P1(m).

PWs.1, 2 and 3 were subjected to a detailed cross-examination from the defendant's side, wherein all the three witnesses adhered to their original versions. Nothing could be brought out in their cross-examination to weaken the case of the plaintiff.

15. The defendant, Sri S.Selvaraj got himself examined as DW.1, who in his examination-in-chief has reiterated the contention taken up by him in his written statement. He stated that he had no intention to sell the suit schedule property, as the value of the property is more than a sum of ₹50,00,000/- as on the date of the sale agreement. He specifically contended that there is no obligation on him to enforce the alleged sale agreement and that the plaintiff has not enforced the said agreement within the stipulated period of three months from 27.03.2013. It is after long lapse of one year, the plaintiff got issued notice about his readiness and willingness and subsequently filed the suit, as such, the suit is not maintainable. He stated that the delay and laches will disentitle the plaintiff to get any relief. No documents were exhibited from his side.

In his cross-examination, he himself has stated that in order to put-up a house at Bengaluru, he had agreed to sell the suit schedule property to the plaintiff and had entered into an agreement to that effect. He admitted that he has entered into an agreement with the plaintiff as per

Ex.P1. He further admitted that the signatures at Exs.P1(a) to P1(e) are his signatures. He specifically stated that though stamp paper for Ex.P1 was purchased on 05.09.2012, however, he has put his signature to the said agreement on 27.03.2013. He further stated that he has put his correction signature to the date mentioned in Ex.P1. He also stated that his son-in-law, Sri Deeptha and PW.2 have also put their signatures to the agreement for sale at Ex.P1. He further stated that after he put his signature to Ex.P1, the Advocate-Sri G.Mani also has put his signature. The witness has stated that it was agreed in Ex.P1 that the sale deed has to be executed within three months. He also stated that the sale consideration is shown as ₹14,00,000/- in Ex.P1, for which, he had agreed. He specifically admitted that he has received a sum of ₹10,00,000/- as an advance amount. He stated that the balance amount of ₹4,00,000/- was agreed to be given to him at the time of execution and registration of the sale deed. He admitted a suggestion as true that page-3, para-3 of the agreement for sale has authorised the plaintiff to get the sale deed executed through the Court and at the

expenses of the vendor, in case if the vendor failed to perform his part of the obligation. Stating so, the witness repeatedly stated that since his problem was not solved at Bengaluru and he is intending to come back and settle at Robertsonpet, K.G.F., he is not ready to execute the sale deed in favour of the plaintiff.

16. The above specific clear and categorical admissions and the statements made by the defendant himself as DW.1 in his cross-examination clearly establishes that he had entered into an agreement with the plaintiff on 27.03.2013 as per Ex.P1 agreeing to sell the suit schedule property to the plaintiff for a total consideration of a sum of ₹14,00,000/- and also had received an advance part sale consideration of a sum of ₹10,00,000/- from the plaintiff. Therefore, without going into much discussion, suffice it to say that the evidence of PWs.1 to 3 about the execution of the agreement for sale by the defendant as per Ex.P1 could not be shaken in their cross-examination. On the other hand, the defendant himself both in his written statement and in his evidence,

has clearly admitted about he executing the agreement as per Ex.P1 in favour of the plaintiff. In his cross-examination, as observed above, he has very vividly made several admissions on his side and himself has stated about he executing the agreement for sale of the suit schedule property in favour of the plaintiff as per Ex.P1 and receiving a partial sale consideration of sum of ₹10,00,000/-. Therefore, the Trial Court has rightly answered issue Nos.1 and 2 in the affirmative.

17. The plaintiff in order to show that he was always ready and willing to perform his part of the contract as per the terms of the contract as stated in his evidence, has produced the legal notices sent to the defendant and returned postal covers carrying those legal notices which was sent to the defendant and he has also produced the courier receipts at Exs.P7 and P8 to show that he has sent the legal notice to the defendant. In his cross-examination, the defendant as DW.1 has admitted that the plaintiff had sent notices to him.

18. The very first notice sent by the plaintiff to the defendant is undisputedly at Exs.P2 and P4(a). The said notice is dated 10.10.2013, in which, the plaintiff has categorically stated that the defendant under the sale agreement had agreed to handover the original documents such as sale deed, title deed, khatha extract, upto date tax paid receipts, light bill, water bill and encumbrance certificate to the plaintiff before proceeding for registration. However, inspite of repeated demands and requests made by the plaintiff, the defendant did not come forward either to execute the sale deed in favour of the plaintiff or to handover those necessary documents to the plaintiff. In the very notice itself, the plaintiff has categorically stated that he is ready and willing to pay the balance sale consideration of ₹4,00,000/- at any time, whenever the defendant demands and has called upon him to come forward to execute the registered sale deed in his favour. The subsequent notice dated 23.06.2014 sent by the plaintiff to the defendant which is at Exs.P5 and 6(a) is also after making a mention about the previous notice

dated 10.10.2013 and reiterating the contention taken in the said notice, has called upon the defendant to accept the balance sale consideration of ₹4,00,000/- and to execute the sale deed. Admittedly, the defendant has not responded to the said legal notices, though in his cross-examination as DW.1, he has stated that the plaintiff had sent legal notices to him.

19. It is in the above background, the learned counsel for appellant, in his argument submitted that though the plaintiff had sent notice to the defendant, however, except his oral statement that he was ready and willing to perform his part of the contract, has not produced any document to show that he was financially sound to pay the balance sale consideration of ₹4,00,000/- to the defendant. He submitted that no Bank passbook has been produced by the plaintiff to support his contention that he was ready and willing to perform his part of the contract.

20. Learned counsel for the respondent (the plaintiff) in his argument submitting that it is not mandatory that

the agreement holder should necessarily produce the document to show his financial position, has relied upon the judgment in **Basavaraj's** case (*supra*). In the said case, the Hon'ble Apex Court in paragraph-6.2 of its judgment after relying upon its previous judgment in the case of **Indira Kaur and Ors. v. Sheo Lal Kapoor** reported in **(1988)2 SCC 488** was pleased to observe that unless the plaintiff was called upon to produce the passbook either by the defendant or, Court orders him to do so, no adverse inference can be drawn. With the said observation, the Hon'ble Apex Court reversed the finding on the readiness and willingness recorded by the High Court, holding it as erroneous and restored the decree of specific performance passed by the Trial Court.

In the instant case also, the defendant nowhere in his written statement has taken a contention about the alleged financial incapacity of the plaintiff to perform his part of the obligation under the contract. Even in the cross-examination of PW.1 also, nothing was elicited to show that the plaintiff had no financial capacity to pay the

balance amount of ₹4,00,000/-. On the other hand, the defendant himself admitted of he receiving a sum of ₹10,00,000/- by the plaintiff. Thus, when the plaintiff could able to pay ₹10,00,000/- as an advance amount, it is hard to believe that he had no capacity to pay the balance amount of ₹4,00,000/- to the defendant.

21. The contention of the alleged financial incapacity of the plaintiff was taken by the appellant in his argument in this appeal. Admittedly, neither the defendant nor the Court had directed the plaintiff to produce any documents including the Bank passbook to show the financial capacity of the plaintiff to pay the balance sale consideration. Therefore, the argument of the learned counsel for the appellant on the alleged financial incapacity of the plaintiff, is also not acceptable.

22. Lastly, the appellant in his memorandum of appeal as well as the learned counsel in his argument has taken a contention that the plaintiff has approached the Court with delay which is beyond three months which was the agreed time limit for the performance of the contract, as

such, he is not entitled for the relief of specific performance.

No doubt, Ex.P1 shows that the time stipulated for the performance of the contract was three months from the date of the agreement, which was on 27.03.2013. It further says that if the purchaser fails to pay the balance sale consideration amount within the stipulated period, the advance amount will be refunded to the purchaser. Thus, according to the defendant, the plaintiff should have paid the balance amount on or before 26.06.2013 and proceed further.

23. A perusal of the evidence led in the matter from both side and the legal notices more particularly at Exs.P2 and P5 would clearly go to show that at the earliest point of time, the plaintiff has sent a notice to the defendant calling upon him to perform his part of the obligation under the agreement by accepting the balance sale consideration and executing the registered sale deed.

In the first notice at Ex.P2 which was sent on 10.10.2013, the plaintiff has specifically and categorically stated that

the defendant as a vendor had agreed to handover the original documents such as sale deed, title deed, khatha extract, upto date tax paid receipts, light bills, water bills and encumbrance certificate etc. pertaining to the suit schedule property to the purchaser before proceeding for registration. A specific recital is there to that effect in the agreement for sale at Ex.P1. In the notices at Exs.P2 and P5, it is clearly and specifically stated that all those documents, which the defendant as a vendor had agreed to handover to the plaintiff (the purchaser) were not handed over to him. The defendant (the vendor) has not denied the same. According to the terms of the contract at Ex.P1, those documents were required to be handed over to the plaintiff (the purchaser) by the defendant (the vendor) before proceeding for registration. Therefore, unless and until those documents were handed over to the plaintiff, he was not expected to come forward to pay the balance sale consideration without getting those documents. Still after waiting for a reasonable period of nearly about four months after the expiry of the period

mentioned in Ex.P1, the plaintiff has sent a legal notice to the defendant calling upon him to perform his part of promise and showing that he (the plaintiff) has always been ready and willing to perform his promise of the contract. The defendant, who has admitted the notice in his cross-examination as DW.1 has admittedly not responded to the notice sent to him. On the other hand, the defendant as DW.1 has nowhere complained that the agreement was barred by time or limitation. He has repeatedly stated that since his problems were not solved at Bengaluru and he wanted to go back to Robertsonpet, K.G.F. and to reside in the suit schedule property, he is not ready to execute the sale deed. Therefore, the claim of the plaintiff seeking for specific performance cannot be held to be barred by limitation or cannot be held as not maintainable. On the other hand, it is the defendant, who has shown his intention of not performing his part of the promise under the agreement at Ex.P1. Therefore, the last argument of the learned counsel for appellant that the suit was filed beyond the time stipulated under the agreement,

as such, the plaintiff is not entitled for specific performance of contract, is not acceptable.

It is considering all these aspects and also considering the hardships that would be caused to the parties before it, the Trial Court has rightly exercised its discretion decreeing the suit and ordering for specific performance of the agreement in favour of the plaintiff. The said discretion exercised by the Trial Court under Section 20 of the Specific Relief Act, 1963 cannot be held to be unjustified or arbitrary. As such, the impugned judgment and decree does not warrant any interference at the hands of this Court so far as decreeing the suit of the plaintiff for specific performance. However, in the light of the fact and circumstances of the case, whether the defendant who is the vendor of the property is entitled for an additional amount apart from the contractual amount, is to be considered.

24. As analysed above, the total sale consideration agreed between the parties was a sum of ₹14,00,000/-, the same is depicted in the agreement for sale at Ex.P1 as

well in the evidence of both side also. However, the contention of the defendant commencing from his written statement upto his evidence is that the value of the property as on the date of the alleged agreement was more than ₹50,00,000/-, as such, he would not have agreed for sale of the said property for a paltry sum of ₹14,00,000/-.

Though the said contention of the defendant that he has not agreed to sell the property for a sum of ₹14,00,000/-, is not accepted for the reasons given above, however, the contention of the defendant that the suit property was more than value of ₹50,00,000/- as on the date of the agreement for sale, was put to PWs.1 and 2 in their cross-examinations. Both those witnesses have pleaded their ignorance about the same, but specifically have not denied that the suit property was not worth about ₹50,00,000/- as on the date of the agreement.

In addition to the above, the defendant as DW.1 also has stated in his examination-in-chief that the value of the suit schedule property was more than ₹50,00,000/- as on

the date of the alleged agreement for sale. The said contention about the valuation has not been specifically denied in his cross-examination. From the said pleading and evidence, it is clear that the market value of the suit schedule property appears to be more than the agreed consideration in the agreement at Ex.P1. However, since the consideration need not be adequate, suffice if it is sufficient that the defendant had agreed to receive a total consideration of ₹14,00,000/- only. Still considering the contention of the defendant that the very purpose of he entering into a contract has not been materialised and that hardship would be caused to him in case if the specific performance is ordered, I am of the view that to do the complete justice, if the plaintiff is directed to pay a further sum of ₹5,00,000/- to the defendant towards sale consideration, which will be in addition to the balance sale consideration of a sum of ₹4,00,000/- payable to the defendant under the agreement at Ex.P1, it will meet the ends of justice. The Hon'ble Apex Court in *Basavaraj's* case (*supra*) had also arrived at such a finding and in order to

do the complete justice, it had directed the plaintiff to pay a further sum of ₹10,00,000/- towards the sale consideration. Thus, it is only to that extent of directing the plaintiff to pay a further sum of ₹5,00,000/- only, the impugned judgment and decree warrants interference at the hands of this Court.

25. Accordingly, I proceed to pass the following:

ORDER

(i) The appeal filed by the defendant is ***allowed-in-part***;

(ii) The impugned judgment and decree dated 27.03.2017 passed by the Senior Civil Judge and Principal J.M.F.C., K.G.F. in O.S.No.51/2014 stands modified to the extent that the plaintiff shall pay a sum of ₹4,00,000/- towards balance sale consideration and a further sum of ₹5,00,000/- to the defendant within three months from the date of the order;

[iii] The defendant is directed to execute and register a regular sale deed in respect of the suit schedule property within three months

from the date of the order, by receiving the above said sum of ₹4,00,000/- + ₹5,00,000/-, in total, ₹9,00,000/-;

[iv] The plaintiff is at liberty to execute the decree in accordance with law, in the event of defendant's failure to execute the sale deed in favour of the plaintiff within three months from the date of the order;

[v] Rest of the terms of the impugned judgment and decree remains unaltered;

[iv] There is no order as to costs.

Draw the modified decree accordingly.

Registry to transmit a copy of this judgment along with the Trial Court records to the concerned Trial Court, immediately.

**Sd/-
JUDGE**

LB