

# Shivalingappa S/O Siddappa Savalagi vs Jineshwar S/O Bharmu Nyamagoud on 23 January, 2025

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NC: 2025:KHC-D:1298-DB  
RFA No. 100355 of 2019

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH  
DATED THIS THE 23RD DAY OF JANUARY, 2025  
PRESENT  
THE HON'BLE MR. JUSTICE ASHOK S. KINAGI  
AND  
THE HON'BLE MR. JUSTICE UMESH M ADIGA  
REGULAR FIRST APPEAL NO. 100355 OF 2019 (SP)

Digitally signed by  
MOHANKUMAR B  
SHELAR  
Location: High Court of  
Karnataka, Dharwad  
Bench

BETWEEN:

1. SHIVALINGAPPA S/O SIDDAPPA SAVALAGI  
AGE: 39 YEARS, OCC: GOVT. SERVANT AND  
AGRICULTURE, R/O: #1094  
GANDHI NAGAR, HUNNUR,  
TQ: JAMKHANDI, DIST: BAGALKOTE-587301.  
SINCE DECEASED BY HIS LRS.,
- 1a. SMT. SOUMYA W/O SHIVALINGAPPA SAVALAGI  
AGE: 39 YEARS, OCC: GOVT. SERVANT AND  
AGRICULTURE, R/O: NO. 1094  
GANDHI NAGAR, HUNNUR,  
TQ: JAMKHANDI, DIST: BAGALKOTE-58730.
- 1b. KIRAN S/O SHIVALINGAPPA SAVALAGI  
AGE: 17 YEARS, OCC: STUDENT,  
R/O: NO. 1094 GANDHI NAGAR, HUNNUR,  
TQ: JAMKHANDI, DIST: BAGALKOTE-587301.
- 1c. AVINASH S/O SHIVALINGAPPA SAVALAGI  
AGE: 16 YEARS, OCC: STUDENT,  
R/O: NO. 1094 GANDHI NAGAR, HUNNUR,  
TQ: JAMKHANDI, DIST: BAGALKOTE-587301.
- 1d. PRAJWAL S/O SHIVALINGAPPA SAVALAGI  
AGE: 13 YEARS, OCC: STUDENT,  
R/O: NO. 1094 GANDHI NAGAR, HUNNUR,

TQ: JAMKHANDI, DIST: BAGALKOTE-587301.

APPELLANTS NO.1(b TO d) ARE MINORS AND

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RFA No. 100355 of 2019

REPRESENTED BY THEIR MOTHER AND NATURAL  
GUARDIAN APPELLANT NO.1(a)  
SMT. SOUMYA W/O SHIVALINGAPPA SAVALAGI

...APPELLANTS

(BY SRI. GIRISH A YADAWAD, ADV FOR A1(a TO d)  
APPELLANT NOS.1(b TO d) ARE MINORS, R/BY A1(a))  
AND:

1. JINESHWAR S/O BHARMU NYAMAGOUD  
AGE: 33 YEARS, OCC: AGRICULTURE AND  
BUSINESS, R/O: ALGUR, TQ: JAMKHANDI,  
DIST: BAGALKOTE-587301.
2. SURESH S/O CHANDAPPA NYAMAGOUD  
AGE: 52 YEARS, OCC: AGRICULTURE AND  
BUSINESS, R/O: ALGUR, TQ: JAMKHANDI,  
DIST: BAGALKOTE-587301.

...RESPONDENTS

(BY SRI. IRANAGOUDA K KABBUR, ADV FOR R1 & R2)

RFA FILED UNDER SECTION 96(1) R/W ORDER XLI RULE 1 OF  
CPC., 1908, AGAINST THE JUDGMENT AND DECREE DTD:08.04.2019  
PASSED IN O.S.NO.65/2016 ON THE FILE OF THE PRINCIPAL SENIOR  
CIVIL JUDGE, JAMKHANDI, DECREETING THE SUIT FILED FOR  
SPECIFIC PERFORMANCE OF CONTRACT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY,  
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI  
AND  
THE HON'BLE MR. JUSTICE UMESH M ADIGA

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RFA No. 100355 of 2019

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI) This regular first appeal is filed by the appellants, challenging the judgment and decree dated 08.04.2019 passed in O.S.No.65/2016 by the learned Principal Senior Civil Judge, Jamkhandi.

2. For convenience, the parties are referred to, according to their ranking before the trial Court. The appellant was the defendant, and the respondents were the plaintiffs.

3. Brief facts leading rise to the filing of this appeal are as follows:

The plaintiffs filed a suit against the defendant for the Specific Performance of a Contract. It is the case of the plaintiffs that, the defendant is the absolute owner of the suit schedule property, and he agreed to sell the suit schedule property for consideration of Rs.33 lakhs, and it was agreed that, the plaintiffs should pay a sum of Rs.32 lakhs towards earnest money, and agreed to pay the NC: 2025:KHC-D:1298-DB balance consideration amount at the time on or before 31.03.2016. As per the terms and conditions of the agreement of sale, the plaintiffs have paid a sum of Rs.32 lakhs towards earnest money, and accordingly, the defendant executed a registered sale agreement on 13.01.2016. The defendant had undertaken to clear the encumbrance over the suit properties and execute the sale deed within 31.03.2016. The plaintiffs requested the defendant to receive the balance consideration amount and execute a registered sale deed, but the defendant went on postponing on one pretext or the other. The plaintiffs issued a legal notice on 07.04.2016 calling upon the defendant to receive the balance consideration amount and execute a registered sale deed. Notice was duly served on the defendant. The defendant did not reply to the legal notice. The plaintiffs were/are ready and willing to perform their part of the contract, but the defendant did not perform his part of the contract. Hence, a cause of action arose for the plaintiffs to file a suit for specific NC: 2025:KHC-D:1298-DB performance of a contract. Accordingly, prays to decree the suit.

4. The defendant filed a written statement, denying the execution of a sale agreement. It is contended that, the defendant executed a sale agreement as a security for the loan of Rs.5 lakhs obtained by him from the plaintiffs. It is contended that, there was no sale transaction between the plaintiffs and the defendant. It is contended that, it is only a loan transaction. The said transaction is not genuine. It was only nominal. It is contended that, the defendant never intended to sell the suit property to anybody, and the market value of the suit property is more than 7.32 crores. It is contended that, the defendant received Rs.5 lakhs from the plaintiffs and could not repay the loan amount. The plaintiffs, taking advantage of the circumstances, have misused the sale agreement, and filed this suit on false and baseless grounds. It is contended that, the suit schedule property is the joint family property of the defendant and his family NC: 2025:KHC-D:1298-DB members. It is

contended that, the defendant alone had no right to execute a sale agreement in favour of the plaintiffs. It is contended that, if a suit for specific performance of a contract is granted the defendant would be put to hardship. Hence, on these grounds, prays to dismiss the suit.

5. The trial Court, based on the pleadings of the parties, framed the following issues:

- 1) Whether plaintiffs prove that defendant has executed agreement of sale on 13.01.2016 in respect of suit property by receiving earnest money of Rs.32,00,000/-, out of consideration amount of Rs.33,00,000/-?
- 2) Whether plaintiffs prove that they are ready and willing to perform their part of contract?
- 3) Whether the defendant proves that he has taken financial help of Rs.5,00,000/- from the plaintiff, at that time nominal sale deed was executed as a security of loan amount?
- 4) Whether plaintiffs are entitled for the reliefs as claimed?
- 5) What order or decree?

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6. The plaintiffs, to substantiate their case, plaintiff No.1 was examined as PW.1, examined two witnesses as Pws.2 and 3, and marked 3 documents as Exs.P1 to 3. In rebuttal, the defendant was examined as Dw.1, examined two witnesses as Dws.2 and 3, and marked 10 documents as Exs.D1 to 10. The trial Court, after recording the evidence, hearing on both sides, and on assessment of oral and documentary evidence, answered issue Nos.1, 2, and 4 in the affirmative, issue No.3 in the negative, and issue No.5 as per the final order.

7. The suit of the plaintiffs was decreed with costs. The defendant was directed to execute the registered sale deed in respect of the suit property R.S.No.18/2 measuring 01 acre 21 guntas situated in the limits of Madarkhandi village by receiving the balance consideration of Rs.1,00,000/- from the plaintiffs within a period of 3 months. Failing which, the plaintiffs are entitled to get the NC: 2025:KHC-D:1298-DB sale deed executed through the process of Court, for conveying the right, title, and interest over the suit.

8. The defendant, aggrieved by the judgment and decree dated 08.04.2019 passed in O.S.No.65/2016 filed this regular first appeal.

9. Heard the learned counsel for the defendant and learned counsel for the plaintiffs.

10. Learned counsel for the defendant submits that, the suit schedule property is the joint family property of the defendant and his family members. He submits that, the defendant alone has no

right to execute a sale agreement. He submits that, the defendant had taken a loan of Rs.5 lakhs from the plaintiffs for the construction of the house. The sale agreement was executed as a security, for the repayment of the loan amount. He submits that, it is not a sale transaction, but it is a loan transaction. He also submits that, the defendant never intended to sell the suit schedule property in favour of the NC: 2025:KHC-D:1298-DB plaintiffs. He further submits that, the defendant has not received the earnest money as mentioned in the sale agreement. He submits that, the plaintiffs have no financial capacity to purchase the property by paying a huge amount of Rs.33 lakhs. He further submits that, the plaintiffs were not ready and willing to perform their part of the contract, and the plaintiffs have failed to prove the requirements of section 16(c) of the Specific Relief Act, 1963. He submits that, the trial Court has not exercised the judicial discretion vested under Section 20 of the Specific Relief Act. He also submits that, PW.1 has admitted that, the market value of the site measuring 40 X 30 ft. is 10-12 lakhs. He also submits that, the plaintiffs have suggested to DW.1 that, suit schedule property is the joint family property of the defendant and his family members. The said suggestion was not considered by the court below. To buttress his argument, he has placed his reliance on the judgment of the Hon'ble Apex Court in the case of JAYAKANTHAM AND OTHERS V S. ABAYKUMAR REPORTED IN 2017 (5) SCC 178. Hence, he prays to

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NC: 2025:KHC-D:1298-DB modify the judgment and decree passed by the trial Court, and grant alternative relief of refund of earnest money. He further submits that, the trial Court has not considered the issue of hardship. Hence, on these grounds, he prays to allow the appeal.

11. Per Contra, learned counsel for the plaintiffs submits that the defendant has admitted the execution of the sale agreement. When the defendant has admitted the execution of the agreement, there is no need to execute the sale agreement. He submits that, the fact admitted need not be proved as per (Section 58 of the Indian Evidence Act) Section 53 of Bharatiya Sakshya Adhiniyam, 2023. He further submits that, the plaintiffs paid a sum of Rs.32 lakhs as an advance amount on the date of execution of a sale agreement. Though the plaintiffs have suggested to DW.1 that, they possess more than 100 acres of land, and are growing 3000 quintals of sugar cane crops, and have a sufficient source of income for purchasing the suit schedule property, DW.1 has pleaded

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NC: 2025:KHC-D:1298-DB ignorance, but, has not denied the said suggestion. Hence, he submits that, the plaintiffs have the financial capacity to purchase the suit schedule property. He also submits that, plaintiffs, to prove their readiness and willingness, issued a legal notice to the defendant, calling upon them to receive the balance consideration amount, and execute the registered sale deed. The said notice was duly served, but the defendant did not reply to the legal notice. He further submits that, the defendant has failed to prove the defence, contending that it is not a sale transaction, but it is a loan transaction. He also submits that the evidence of DWs.2 and 3 does not prove the loan transaction. He further submits that, the defendant is a Government servant, and even if the suit for the specific performance of a contract is decreed, no hardship would be caused to the defendant. He submits that, the trial court was justified in passing the impugned

judgment. Hence, on these grounds, prays to dismiss the appeal.

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12. Perused the records, and considered the submissions of the learned counsel for the parties.

13. The points that arise for our consideration are as follows:

- 1) Whether the defendant proves that by virtue of Ex.P2, the transaction between the plaintiffs and defendant is a loan transaction and not a sale transaction?
- 2) Whether the defendant proves that if a suit for specific performance of a contract is decreed, the defendant would be put to hardship?
- 3) Whether the defendant proves that the impugned judgment is arbitrary and erroneous?
- 4) What order or decree?

14. Re-Point No.1: It is the case of the plaintiffs that, the defendant is the absolute owner of the suit schedule property and agreed to sell the suit schedule property for a consideration of Rs.33 lakhs, and

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NC: 2025:KHC-D:1298-DB accordingly, the plaintiffs paid a sum of Rs.32 lakhs as the earnest money, and it was agreed that, the balance be paid within 3 months on or before 31.03.2016. Further, the sale transaction was reduced into writing and the sale agreement was registered on 13.01.2016. It was agreed that, the defendant has undertaken to clear the encumbrance over the suit property before executing the registered sale deed. The plaintiffs requested the defendant to clear encumbrance on the suit property and perform the contract. The defendant went on postponing on one pretext or the other. The plaintiffs issued a legal notice calling upon the defendant to receive the balance consideration amount and execute the registered sale deed. The said notice was duly served on the defendant. The defendant did not reply to the legal notice. The plaintiff to substantiate his case, plaintiff No.1, was examined as PW.1, and he reiterated the plaint averments in the examination-in-chief, and to prove that, the suit schedule property is owned and possessed by the defendant, produced the record of rights for the Year

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NC: 2025:KHC-D:1298-DB 2015-16 marked as Ex.P1. Ex.P2 is the registered sale agreement dated 13.01.2016, which discloses that, the defendant agreed to sell the suit schedule property for

consideration of Rs.33 lakhs, and the plaintiffs paid Rs.32 lakhs towards earnest money, and it was agreed that, the balance consideration amount to be paid on or before 31.03.2016 and it was agreed that, the defendant before executing the registered sale deed, should clear the encumbrance over the suit property.

15. The plaintiffs, to prove that they are/were ready and willing to perform their part of the contract, issued a legal notice on 07.04.2016, calling upon the plaintiffs to receive the balance consideration amount and execute the registered sale deed. The same is marked as Ex.P.3. The notice was duly served on the defendant. The defendant did not reply to the legal notice. In the course of cross examination, it was suggested to PW.1 that, the market value of the suit schedule property as on the date of execution of the sale agreement, was worth Rs.7.32

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NC: 2025:KHC-D:1298-DB crores, and the said transaction is a loan transaction and not a sale transaction. The said suggestion was denied by PW.1. Further, the plaintiffs to prove the execution of an agreement of sale, the plaintiffs examined PW.2, who is an attesting witness to Ex.P2, who has deposed that, the plaintiffs and defendant entered into an agreement of sale regarding the suit schedule property for consideration of Rs.33 lakhs, and the plaintiffs have paid Rs.32 lakhs to the defendant, and the defendant, after receiving the earnest money of Rs.32 lakhs, executed the registered sale agreement marked as Ex.P2. His signature is marked as Ex.P2(c). The plaintiffs also examined the scribe as PW.3. He has deposed that, as per the instructions of the defendant, he has drafted Ex.P2, and after drafting Ex.P2, he has read over the contents and explained the contents of Ex.P2, parties having understood the contents of Ex.P2, they have affixed their signatures on Ex.P2, and his signature is marked as Ex.P2(d).

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16. During the course of cross-examination of PWs.2 and 3, the defendant has suggested to PWs.2, and 3 that, it is a loan transaction and not a sale transaction and Ex.P2 was executed as a security, for the repayment of a loan obtained by the defendant from the plaintiffs. The said suggestion was denied by PWs.2 and 3.

17. In rebuttal, the defendant was examined himself as DW.1, and he has reiterated the written statement averments in the examination-in-chief, and deposed that, Ex.P2 was executed as a security for the loan of Rs.5 lakhs obtained from the plaintiffs. The defendant never intended to sell the suit schedule property. He has deposed that, the suit schedule property is a non-agricultural land. The market value of the suit schedule property was Rs.7.32 crores as on the date of execution of the sale agreement. He has deposed that, in case, if the suit for specific performance of a contract is decreed, the defendant would be put to hardship. To prove the defence, the defendant has produced the documents.

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NC: 2025:KHC-D:1298-DB He also deposed that, the suit schedule property is the joint family property of the defendant and his family members. Hence, to prove that, the suit schedule property is the joint family property of the defendant and his family members, the defendant has produced the RTC extracts marked as Exs.D1 to 4, and 5 to 7 are the mutation extracts. Ex.D8 is the certified copy of the order of the Town Planning Authority, Jamkhandi, granting permission for constructing a house. Ex.D9 is the permission letter issued by Gram Panchayat, Hunnur. Ex.D10 is the copy of Blue print/plan.

18. In the course of cross-examination, the defendant admitted regarding the execution of Ex.P2, but he has contended that, it is not a sale transaction, but it is a loan transaction. Further, to prove the defence of the defendant, examined DWs.2 and 3, who have deposed that, the transaction between the plaintiffs and defendant is a loan transaction and not a sale transaction. From the perusal of the deposition of DWs.2 and 3, it reveals that,

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NC: 2025:KHC-D:1298-DB they were not present as on the date of execution of Ex.P2. Hence, the evidence of DWs.2 and 3 cannot be considered, as they were not present at the time of the transaction between the plaintiffs and defendant. They are chance witnesses. The defendant except contending that, it is a loan transaction, has not produced any other records to establish that, the transaction between the plaintiffs and defendant is a loan transaction.

19. The defendant contends that, the plaintiffs have no financial capacity to pay the huge amount of Rs.32 lakhs. During the course of cross examination of DW.1, the plaintiffs have suggested to DW.1 that, the plaintiffs possess 100 acres of land and grow 3000 quintals of sugar cane every year. DW.1 did not deny the suggestion, but pleads ignorance. The defendant has not seriously disputed the financial capacity of the plaintiffs to purchase the suit schedule property. The defendant, except leading the evidence of DWs.2 and 3, who were not present at the time of the sale transaction, led no evidence to prove his

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NC: 2025:KHC-D:1298-DB defence, and further, the defendant did not suggest to PW.1 that, DWs.2 and 3 were present at the time of the sale transaction.

20. As observed above, the evidence of DWs.2 and 3 does not support the defence of the defendant. Thus, the defendant has failed to establish that, the transaction between the plaintiffs and defendant is the loan transaction. Further, the plaintiffs proved that, they are/were always ready and willing to perform their part of the contract, have got issued a legal notice marked as Ex.P2. The said notice was served on the defendant. The defendant did not reply to the legal notice. However, the defendant has pleaded in the written statement that, after receiving the legal notice, the defendant approached the plaintiffs and requested not to initiate the legal action, to which the plaintiffs replied



that, the plaintiffs would not take any legal steps to enforce the sale agreement. The explanation offered by the defendant is afterthought, after having received the legal notice. The defendant is under

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NC: 2025:KHC-D:1298-DB legal obligation to reply the legal notice. In the absence of a reply, it amounts to a non-reply to the legal notice issued by the plaintiffs before the suit. His silence indicates the admission of the truth to the notice served, as per the law laid down by this Court in the case of SHANKERAPPA VS. SUSHILABAI REPORTED IN AIR 1984 KAR

112. The plaintiffs have proved that, they are/were always ready and willing to perform their part of the contract. On the other hand, the defendant did not perform his part of the contract. The defendant committed a breach of contract. In view of the above discussion, we answer point No.1 in the negative.

21. Re-Point No.2: Though, the defendant has contended that, if a specific performance of the contract is granted the defendant would be put to hardship. Admittedly, the defendant is a Government servant, and the suit schedule property is a non-agricultural property, and the defendant is not getting any income out of the suit property. The defendant, except oral evidence, has not

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NC: 2025:KHC-D:1298-DB produced any record to establish that, the defendant did not possess any other properties. The defendant is working as a Government servant and getting a salary. If a specific performance of the contract is decreed, no harm will be caused to the defendant. The trial Court, has rightly exercised the judicial discretion under Section 20 of the Specific Relief Act. Hence, we do not find any error in the impugned judgment regarding the hardship. In view of the above discussion, we answer point No.2 in the negative.

22. Re-Point No.3: The trial Court considering the admission of DW.1 regarding the execution of a sale agreement, and also Exs.P2 and 3, has rightly decreed the suit of the plaintiff. We do not find any error in reversing the findings recorded by the trial court on the point of execution of the sale agreement, readiness and willingness, and hardship. The defendant died during the pendency of the appeal. His legal representatives are brought on record. Considering the circumstances narrated

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NC: 2025:KHC-D:1298-DB herein above, we are of the opinion that, the trial Court was justified in passing the impugned judgment. Hence, we do not find any error in the impugned judgment. Accordingly, we answer point No.3 in the negative.

23. Re-point No.4: As we have already answered point Nos.1 to 3, in view of the above discussion, we proceed to pass the following:

ORDER i. The appeal is dismissed.

ii. The judgment and decree passed by the trial Court, is hereby confirmed.

iii. However, to do complete justice, the plaintiffs agreed to pay further additional sum of Rs.60 lakhs to the defendant, apart from the balance sale consideration. The said submission is placed on record.

iv. The plaintiffs are directed to deposit Rs.61 lakhs within a period of 2 months from today and on such payment deposited, the legal

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NC: 2025:KHC-D:1298-DB representatives of the defendant are directed to execute the registered sale deed in favour of the plaintiffs within a period of 2 weeks there-from. v. The legal representatives of the defendant are also permitted to withdraw the amount deposited by the plaintiffs.

Sd/-

(ASHOK S. KINAGI) JUDGE Sd/-

(UMESH M ADIGA) JUDGE SKS CT: BSB