



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 10TH DAY OF FEBRUARY 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100173 OF 2025 (SP)

BETWEEN:

ANDANAYYA S/O. YOGAYYA PATIL,
AGE: 54 YEARS, OCC. AGRICULTURE,
R/O. SULIBHAVI, TQ. HUNGUND,
DIST. BAGALKOTE-587124.
PRESENTLY R/O.#103, 5TH CROSS,
5TH MAIN ROAD, NEAR GOVT. PUBLIC LIBRARY,
1ST STAGE, BRINDHAVAN EXTENSION,
MYSURU-570020.

...APPELLANT

(BY SMT.RASHMI P.MANDI, ADVOCATE)

AND:

SOMASHEKARGOUDA
S/O. BASAVANTGOUDA PATIL,
AGE: 58 YEARS, OCC. AGRICULTURE,
R/O. HUNGUND, TQ.HUNGUND,
DIST. BAGALKOTE-587118.

...RESPONDENT

(BY SRI.SANJAY S. KATAGERI, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO
CALL FOR RECORDS AND SET ASIDE THE JUDGMENT AND DECREE
DATED 12.06.2024 PASSED BY THE LEARNED SR. CIVIL JUDGE AND
JMFC, HUNGUND IN O.S.NO.104/2023 BY ALLOWING THE SAID
APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

VIJAYALAKSHMI
M KANKUPPI


Digitally signed by
VIJAYALAKSHMI M
KANKUPPI
Date: 2026.02.13
12:32:00 +0530



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

CORAM: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE GEETHA K.B.)

Even though this is at the stage of admission, at the request and submission of both sides, the arguments heard on merits.

2. This is the appeal of defendant. Parties would be referred to their ranks as they were before trial Court for sake of convenience and clarity.

3. Plaintiff filed a suit before trial Court praying for specific performance of the registered agreement of sale dated 24.02.2021 contending that defendant by receiving a sum of Rs.18,00,000/- as an advance amount, agreed to sell the entire suit schedule property for a sum of Rs.28,62,500/- and entered into the sale agreement which is registered in accordance with law. Defendant agreed to execute registered sale deed whenever called for and agreed to clear the loan and to prepare the papers



ready for registration and he agreed to sell the suit schedule property for his family necessities. He agreed to receive the balance sale consideration amount at the time of registration of the sale deed. Even after repeated request and demands, and even though, plaintiff was ready to pay the balance of sale consideration amount, defendant has taken some more time on some other grounds i.e., to clear the dues over land and postpone the same on one or the other pretext. Hence, plaintiff has issued legal notice dated 11.07.2023 to defendant, which returned unserved. Defendant is intentionally avoiding to execute the registered sale deed. Hence, the suit is filed for appropriate reliefs before trial Court.

4. Even after taking the service of notice, as held sufficient by way of paper publication, defendant has not appeared, hence, placed ex-parte before trial Court.

5. Plaintiff examined himself as P.W.1, apart from examining attestors to the agreement as P.W.2 and P.W.3 and got marked Exs.P1 to P5 and closed his side before trial Court.



6. After recording evidence, the learned trial judge has decreed the suit. The same is challenged in this appeal by defendant.

7. Heard arguments of both sides.

8. It is the contention of the learned counsel for appellant/defendant that suit summons was not served upon defendant because defendant along with his wife and son were in Mysuru to provide proper treatment to his son who was suffering from kidney failure and his wife was donor of kidney. In the meanwhile, the suit was filed and defendant was not at all aware about filing of the suit. He has not seen the paper publication which was published only in a local newspaper. Only after issuance of notice of execution petition, appellant came to know about filing of the suit and decreeing the suit and hence, this appeal is filed.

9. Learned counsel for appellant Smt. Rashmi P. Mandi would submit that the appellant is having very good grounds of defence and it could not be taken because of the aforesaid



reasons. Hence, learned counsel prayed for remand of the matter.

10. Learned counsel for respondent/plaintiff Sri Sanjay S. Katageri would submit that summons were duly served on defendant as per Order 5 Rule 20(A) of CPC i.e., through paper publication. Defendant intentionally not contested the suit. The agreement between parties is a registered agreement of sale. Hence, presumption would be in favour of plaintiff. Furthermore, substantial part of sale consideration amount was paid under the agreement, hence, prayed for dismissal of appeal.

11. Having heard arguments of both sides and verifying appeal papers, the points that arise for consideration are:

- i. Whether appellant/defendant was prevented from sufficient cause in not appearing before trial Court and not contesting the suit?*
- ii. Whether remand of the matter to trial Court is required?*



12. Our finding on the above points is in AFFIRMATIVE for the following reasons.

13. This is the appeal filed against the judgment and decree passed in a suit for specific performance of the contract. The alleged agreement between plaintiff and defendant is a registered one. According to the contention of plaintiff, the defendant, who was in dire need of money for his family necessity, has agreed to sell suit schedule property bearing Sy.No.3/2 measuring 5 acres 29 guntas for a sum of Rs.28,62,500/- and received an earnest money of Rs.18,00,000/- under the agreement and agreed to receive the balance sale consideration amount at the time of registration of the sale deed and also agreed to execute registered sale deed as and when called for.

14. It is to be noted here that the suit summons was not served to defendant in ordinary course. When suit summons was issued to defendant, through Court and through registered post, they were returned unserved on the ground that defendant was not available in the house. Hence, suit summons through paper publication in daily newspaper was taken.



15. It is the specific contention of appellant/defendant that his son had kidney failure and he had to undergo kidney transplant operation and his wife is donor of the kidney. Hence, in that process, appellant with his wife and son were continuously in Mysuru and they were not in the plaint cause title address and thus, they were not aware about filing of the suit or decree of the suit.

16. The paper publication was taken only in local newspaper and it was not having publication in Mysuru at relevant point of time. Hence, the contention of appellant appears to be genuine.

17. The defence of defendant could not be put-forth before trial Court for the aforesaid reason and thus, defendant was prevented from sufficient cause in not appearing before trial Court and to contest the suit.

18. Under these circumstances, definitely an opportunity is to be given to appellant to put-forth his defence. However, it is the contention of plaintiff that he has already paid substantial consideration amount to the defendant and he has deposited the



remaining consideration amount before trial Court in the execution petition. Hence, if matter is remanded and if it takes long time, definitely plaintiff would suffer.

19. Considering all these facts, we are of the considered opinion that, it is just and proper to remand the matter to trial Court by imposing reasonable costs with a direction to give suitable opportunity to defendant to file his written statement and to contest the suit and to give opportunity to both sides to put-forth their case properly.

20. Hence, we proceed to pass the following:

ORDER

- i. Appeal filed under Section 96 of CPC is **allowed** by imposing costs of Rs.25,000/- by setting aside the judgment and decree dated 12.06.2024 in O.S.No.104/2023 on the file of Senior Civil Judge and JMFC, Hunagund is set aside.
- ii. The matter is remanded back to trial Court for fresh disposal in accordance with law.



- iii. Both parties shall appear before trial Court without Court notice on 09.03.2026 without fail. After such appearance within 10 days, defendant shall file his written statement.
- iv. Both parties shall co-operate before trial Court for early disposal of the suit.
- v. Learned trial judge is hereby directed to dispose the above suit as early as possible. However, within an outer limit of one year from 09.03.2026.
- vi. Both parties are permitted to lead evidence.
- vii. In view of disposal of appeal itself, I.A.No.2/2025 is also disposed of.
- viii. Admissible Court fee shall be refunded to the appellant as per law.
- ix. Costs shall be paid to plaintiff on 09.03.2026 before trial Court.

**SD/-
(MOHAMMAD NAWAZ)
JUDGE**

**SD/-
(GEETHA K.B.)
JUDGE**