

KABC010232952012



IN THE COURT OF THE XXXI ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE (CCH-14) AT BENGALURU

Dated this the 2nd day of March, 2024.

PRESENT:

Sri PRAKASH V., B.A (L.) L.L.B,
VIII Additional City Civil and Sessions Judge, Bengaluru.
Holding Concurrent Charge of the XXXI Additional City
Civil and Sessions Judge (CCH-14), Bengaluru.

ORIGINAL SUIT No.8687/2012

PLAINTIFF : Smt. Hemavathi,
W/o. Mr. Gangadhar,
Aged about 47 years,
No.15/21/1, 2nd Main Road,
Marenahalli, Vijayanagar,
Bengaluru – 560 040.
(By Sri M.J. ALVA Advocate)

–VERSUS–

DEFENDANT : Vijay D.,
S/o. Mr. S. Doraiswamy,
Aged about 39 years, Residing at
No.117/1, 13th Main, II Stage, Binny
Layout, Vijayanagar, Bengaluru –
560 040.
(By K.P.A.K., Advocate)

Date of Institution of the Suit : 10-12-2012

Nature of the Suit (Suit on : Suit for specific performance.
pronote, Suit for declaration
and possession, Suit for injun-
ction etc,)

Date of the commencement : 30-03-2016
of recording of the evidence

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Date on which the Judgment : 02.03.2024
was pronounced

Year/s Month/s Day/s

Total duration : 11 years, 2 months, 22 days

(PRAKASH V.)
Holding Concurrent Charge of the
XXXI Additional City Civil and
Sessions Judge (CCH-14), Bengaluru.

J U D G M E N T

The plaintiff has filed this suit against the defendant for the relief of specific performance of sale agreement dated 10.1.2012 – directing the defendant to execute sale deed in favour of the plaintiff in respect of suit schedule property by receiving balance sale consideration of Rs.40,00,000/- and in the event of failure to execute the sale deed, to execute the same by this Court, for alternative relief of refund of sum of Rs.25,00,00/- with interest at the rate of 24% per annum from the date of agreement, for the costs and such other reliefs.

2. The brief facts of the plaintiff's case – as per the plaint – are as under –

The defendant had entered into an agreement of sale with the plaintiff on 10.1.2012 agreeing to sell the residential property

bearing No.117 with PID No.35-122-117 situated at 13th Main Road, II Stage, Benny Layout, Vijayanagar, Bengaluru for total sale consideration of Rs.65,00,000/- out of which the defendant had received sum of Rs.3,00,000/- through cheque and remaining sum of Rs.15,00,000/- by way of cash and in total Rs.18,00,000/- from the plaintiff on the date of the agreement itself towards the earnest money. The defendant had agreed to execute deed of absolute sale in favour of the plaintiff or in favour of her nominee within a period of six months from the date of the agreement against the receipt of the balance sale consideration amount and price of Rs.47,00,000/- free from all encumbrances. The defendant agreed to furnish all his title deeds pertaining to the schedule property and to handover physical possession of schedule property at the time of execution and registration of the deed of absolute sale. The plaintiff kept the balance sale consideration amount of Rs.47,00,000/- ready with her to be paid to the defendant and she was repeatedly approaching the defendant expressing her readiness and willingness to pay the balance sale price and demanding to execute deed of absolute sale for which the defendant went on postponing the same. On 8.7.2012 the defendant approached the plaintiff and

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expressed his inability to execute sale deed immediately under the pretext that he could not get the tenants in the portions of the dwelling houses in the schedule property evicted by refunding advance amount and sought for extension of further six months time and demanded Rs.7,00,000/- for the purpose of refund of advance amount to the tenants and considering his request the plaintiff had paid the said amount by way of cash to the defendant. The schedule property comprises of dwelling houses in the ground floor and in the first floor with one room in the second floor. The defendant agreed and undertakes to deliver the vacant possession of the schedule property after evicting the tenants. On such assurances the defendant had taken the additional sum of Rs.7,00,000/- from the plaintiff on 8.7.2012 for the purpose of refunding the advance amount to the tenants. The plaintiff was under the *bona fide* belief that the defendant would evict the tenants and keep the portions of the schedule property vacant for delivering the vacant possession of the same to her. But contrary to the assurance and promises the defendant had let out the vacant portion of the premises to one Mr. Girish T., on 21.8.2012 and with this questionable conduct of the defendant it was confirmed by the plaintiff that

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the defendant has been unnecessarily postponing the matter and thereby evading the due execution of the sale deed and she is always ready and willing to pay the balance sale consideration amount to the plaintiff by keeping the funds ready. The plaintiff has also expressed her intention that she is ready and willing to bear the cost of registration and other incidental charges in respect of which she had kept the funds with her. But the transaction could not be completed due to the laches on the part of the defendant who had committed breach of his commitments by keeping the schedule building vacant and by evicting the occupants/tenants and on the other hand the defendant has inducted new tenants in the premises in gross violation of the terms of the contract. In view of these developments, she got issued a notice to the defendant on 29.8.2012 demanding him to execute the sale deed and expressing her readiness and willingness to get the same duly registered in her favour and the said notice was duly served on the defendant on 31.8.2012. But in spite of the due service of the demand notice the defendant has failed to send any reply or to comply with the demands made therein. As such, the plaintiff constrained to file this suit.

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3. After institution of this suit, the suit summons is ordered to be issued to the defendant. On service of the same, the defendant has appeared before this Court and filed written statement.
4. In the written statement of the defendant, he denied the claim of the plaintiff in its entirety contending that plaintiff has been running chit business for over a decade and on earlier occasions and collected blank cheques from the defendant. On 19.1.2012, the plaintiff floated a chit for Rs.5,00,000/- and the defendant bid was accepted and he was issued a crossed cheque for Rs.3,00,000/-. The defendant credited the said cheque for encashment on the very next day itself, i.e., 20.1.2012 and the same was cleared on 24.1.2012 and he withdraw the amount on 25.1.2012 much after the alleged agreement of sale. The defendant came to know the fraud of plaintiff only after receiving the legal notice and the defendant being surprised without losing any time, immediately met the plaintiff in person and asked her about the same, when he was told to ignore the same and to repay sum of Rs.3,00,000/- paid to him. The defendant who believed the same was arranging for payment of the said amount to the plaintiff. The schedule property is worth more than Rs.1.5

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crores and as such, there was no need for the defendant to enter into any agreement with the plaintiff agreeing to sell the same for a paltry sum of Rs.65,00,000/-. The schedule property has been mortgaged for Rs.7,00,000/- to one T. Girish on 21.8.2012 who paid Rs.2,00,000/- by cross cheque and the balance Rs.5,00,000/- by way of cash, which demonstrates that the defendant had not entered into any agreement of sale with plaintiff and accordingly prayed for dismissal of suit.

5. On the basis of the above pleadings, the following Issues have been framed –

I S S U E S

(1) Whether the plaintiff proves that defendant has agreed to sell the schedule property for total consideration amount of Rs.65,00,000/- and executed the sale agreement 10.1.2012 and received the part consideration amount of Rs.25,00,000/- and agreed to execute the sale deed within six months before the concerned sub-register ?

(2) Whether the plaintiff proves that she is ready and willing to perform her part

of contract as per sale agreement dated 10.1.2012?

(3) Whether the defendant proves that plaintiff has obtained his and his wife signature by exercising undue advantage and forceive method and thumb impression on blank paper pertaining to the chit amount of Rs.3,00,000/- which was advanced by plaintiff to him ?

(4) Whether the plaintiff is entitle for the decree of specific performance of contract based on the sale agreement dated 10.1.2012 ?

In alternative, whether the plaintiff entitled for the refund of the advance amt of Rs.25,00,000/- with interest ?

(5) whether the plaintiff is entitled for the decree as prayed for ?

(6) What order or decree?

6. In order to prove the above Issues, the plaintiff examined herself as P.W.1, – also examined two witnesses as P.Ws.2 and 3 and got marked documents as per Exs.P.1 to P.6 and closed her side.

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7. On the other hand, the defendant examined himself as D.W.1 and got marked a document as per Ex.D.1 to D.13 and closed his side too.
8. Heard arguments of counsel for plaintiff. The counsel for plaintiff has also filed written arguments. The counsel for defendant has not addressed arguments, in spite of giving sufficient opportunities.
9. My findings on the above Issues are as under –

ISSUE No.1 – Affirmative;

ISSUE No.2 – Affirmative;

ISSUE No.3 – Negative;

ISSUE No.4 – Partly Affirmative;

ISSUE No.5 – Affirmative;

ISSUE No.6 – As per final order,

for the following –

REASONS

10. ISSUE NOs.1 AND 3 : Since both these Issues are inter-related with each other, they are being taken up together for discussion at a stretch in order to avoid repetitive discussion of facts.

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11. It is the definite case of plaintiff that, the defendant had entered into an agreement of sale with plaintiff on 10.1.2012 agreeing to sell the suit property for a total sale consideration of Rs.65,00,000/- out of which the defendant had received sum of Rs.3,00,000/- through cheque and remaining sum of Rs.15,00,000/- was paid by way of cash and in total a sum of Rs.18,00,000/- was paid on the date of the agreement itself towards part of the sale price. The defendant agreed to execute the deed of absolute sale in favour of the plaintiff or in favour of her nominee within a period of six months from the date of the agreement by receiving balance sale consideration. The defendant agreed to furnish all his title deeds pertaining to the schedule property and to handover physical vacant possession of the schedule property at the time of execution and registration of the deed of absolute sale. The plaintiff kept the balance sale consideration amount of Rs.47,00,000/- ready with her to be paid to the defendant and she was repeatedly approaching the defendant expressing her readiness and willingness to pay the balance sale price and demanding the due execution of the deed of absolute sale in her favour for which the defendant went on postponing the same. The defendant failed to keep the

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schedule property vacant to be delivered to the plaintiff against the registration of the sale deed. On 8.7.2012 the defendant approached the plaintiff and expressed his inability to execute the sale deed immediately under the pretext that he could not get the tenants in the portions of the dwelling houses in the schedule property evicted by refunding their advance amount and sought for extension of further six months time and demanded Rs.7,00,000/- for the purpose of refund of advance amount to the tenants. By considering the request, the plaintiff had paid the amount by way of cash to the defendant. The defendant is the absolute owner of schedule property with absolute right and marketable title and he is legitimately entitled to enter into the contract of sale in respect of schedule property. The defendant agreed to deliver the vacant possession of the schedule property after evicting the tenants. She was under the *bona fide* belief that the defendant would evict the tenants and keep the portions of the schedule property vacant for delivering the vacant possession. But contrary to the assurance and promises the defendant had let out the vacant portions of the premises to one Mr. Girish T., on 21.8.2012 and with this questionable conduct of the defendant it was confirmed by the plaintiff that

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the defendant has been unnecessarily postponing the matter and thereby evading to execute sale deed.

12. In order to prove these aspects, the plaintiff has filed her affidavit in lieu of her chief-examination and she has reiterated the above facts in her evidence and also mainly relied on the contents of Exs.P.1 to P.6 and evidence of P.Ws.2 and 3 who are said to be the attesting witnesses to Ex.P.1 sale agreement.

13. *Per contra*, the defendant admits his ownership over the suit property, but denied the case of the plaintiff with regard to execution of the sale agreement as claimed by the plaintiff contending that the plaintiff has been running chit business for over a decade and on earlier occasions and collected blank cheques from the defendant. On 19.1.2012, the plaintiff floated a chit for Rs.5,00,000/- and the defendant bid was accepted and he was issued a crossed cheque for Rs.3,00,000/-. The defendant credited the said cheque for encashment on the very next day itself, i.e., 20.1.2012 and the same was cleared on 24.1.2012 and he withdraw the amount on 25.1.2012 much after the alleged agreement of sale. The defendant came to know of the fraud of plaintiff only

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after receiving the legal notice and the defendant being surprised without losing any time, immediately met the plaintiff in person and asked her about the same, when he was told to ignore the same and pay her the sum of Rs.3,00,000/- paid to him. The defendant who believed the same was arranging for payment of the said amount to the plaintiff. The schedule property is worth more than Rs.1.5 crores and as such, there was no need for the defendant to enter into any agreement with the plaintiff agreeing to sell the same for a paltry sum of Rs.65,00,000/-. The schedule property has been mortgaged for Rs.7,00,000/- to T. Girish on 21.8.2012 who paid Rs.2,00,000/- by cross cheque and the balance Rs.5,00,000/- by cash.

14. In order to prove these aspects, the defendant has stepped into the witness box and he has reiterated the above facts in his affidavit and also mainly relied on the contents of Ex.D.1 to D.13.

15. With the rival contentions urged by both sides, it appears to me that the execution of sale agreement dated 10.01.2012 by receiving the advance sale consideration of Rs.25,00,000/- is seriously disputed by the defendant on the ground that the

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plaintiff has created the Ex.P1 sale agreement by misusing the signatures obtained by the plaintiff on blank stamp paper at the time of payment of chit amount. On the background of the contention taken up by the defendant, it is for the plaintiff to establish before this Court that the defendant had executed sale agreement on 10.1.2012 by receiving advance sale consideration of Rs.18,00,000/-and Rs.7,00,000/- respectively. Whether the plaintiff succeeded in establishing the due execution of the sale agreement or not? – is to be discussed. Hence, it is just and necessary to go through the material available on record.

16. The plaintiff has produced as many as 6 documents before this court. Ex.P.1 is the sale agreement dated 10.01.2012 said to have been executed by the defendant in respect of the suit property. Ex.P.2 is the Khatha extract pertains to suit property. Ex.P.3 is the Khatha extract pertains to suit property. Ex.P.4 is the tax paid receipts. Ex.P.5 is the office copy of legal notice dated 29.08.2012. Ex.P.6 is the Postal acknowledgment.

17. Ex.P.1 is the sale agreement, which is the basis for filing instant suit for specific performance. The signatures of the

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defendant appearing on the last page of Ex.P.1 sale agreement is marked as Ex.P.1(e). As I have already stated above, the execution of Ex.P.1 sale agreement is seriously disputed by the defendant. The sum and substance of the defence of the defendant is that the plaintiff had obtained the signatures of defendant on blank stamp paper when the plaintiff has paid sum of Rs.3,00,000/- towards chit amount and said signatures were obtained on blank stamp paper towards security for repayment of chit amount. As I have already stated above, the defendant has specifically admits that the signatures available on Ex.P.1 – which is marked as per Ex.P.1(e). Whether the plaintiff has created Ex.P.1 sale agreement by mis-using the signatures obtained on the blank stamp paper or not? – is to be discussed and hence, it is just and necessary to go through the contents of Ex.P.1 sale agreement as well as oral evidence of the plaintiff and her witnesses.

18. On careful perusal of Ex.P.1 sale agreement, it clearly disclosed that the stamp paper of Ex.P.1 was purchased on 10.1.2012 in the name of the defendant by paying duty of Rs.200/- before Sub-register office Vijaya Nagar. On careful reading of the contents of Ex.P.1, it clearly discloses that the

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defendant – being owner of the suit schedule property – agreed to sell the same in favour of the plaintiff for total sale consideration of Rs.65,00,000/- by receiving a sum of Rs.18,00,000/- towards advance sale consideration on the date of execution of said sale agreement and six months' period was fixed for completion of the sale transaction. Further the endorsement dated 10.7.2012 available in the back side of the page No.1 of the Ex.P1 sale agreement further disclosed that on 10.7.2012 the defendant had received a sum of Rs.7,00,000/- towards further sale consideration and the period was also extended for further six months. The plaintiff, in order to prove the due execution of Ex.P.1 sale agreement – also examined two witnesses before this Court as P.Ws.2 and 3. P.W.2 H. Dodda Lakkappa and P.W.3 Doraiaswamy are the attesting witnesses to the Ex.P.1 sale agreement, who, in their chief-examination, has deposed before this Court about execution of the sale agreement at Ex.P.1 by the defendant in favour of the plaintiff agreeing to sell the suit property for total sale consideration of Rs.65,00,000/- by receiving a sum of Rs.18,00,000/-.

19. P.W.2 and 3 in their further chief-examination deposed that on 10.7.2012, they had been to the house of the defendant at the

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request of the defendant and at that point of time, the plaintiff had paid a sum of Rs.7,00,000/-; after receipt of the said amount, the wife of defendant had written the said shara.

20. The plaintiff as well as P.W.2 and 3 in their chief-examination have deposed that on 10.7.2012, they had been to the house of the defendant and the plaintiff had paid a sum of Rs.7,00,000/- and the wife of defendant had written a shara on Ex.P.1 of the defendant. Thereafter, the P.W.2 and 3 and the defendant have subscribed their signatures to the shara. The signatures of the P.W.2 and 3 appearing on the said shara were respectively marked as Ex.P.1(d), Ex.P.4(b). further the signatures of P.W.2 and 3 on the Ex.P1 sale agreement were respectively marked as Ex.P1(c) and Ex.P.1(a). It is important to note that so far as Ex.P.1(e) signature is concerned, there is absolutely no dispute on the part of the defendant. During the course of cross-examination of the plaintiff as well as cross-examination of the P.Ws.2 and 3, nothing has been elicited from their mouth to disbelieve their version regarding due execution of the Ex.P.1 sale agreement. The oral as well as documentary evidence placed on record by the plaintiff clearly establishes the fact that the defendant being the owner of suit property had executed sale

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agreement in respect of the suit schedule property on 10.7.2012 in favour of the plaintiff agreeing to sell the same for a sum of Rs.65,00,000/- by receiving the advance sale consideration of Rs.25,00,000/-.

21. The defendant has taken up specific contention that he had signed blank stamp paper while receiving chit amount from the plaintiff but during the course of cross-examination of defendant it was elicited from his mouth that he had no documents to show that the plaintiff and her husband were during chit fund business. Further, it was elicited that he had no document to show that he is the member of chit fund and he has not produced receipt for having paid chit amount. Further it was elicited that he had not issued any notice to the plaintiff with regard to chit transaction and also not filed complaint against husband of plaintiff for illegal chit business. It was further elicited that he has no basis to say that the husband of plaintiff is running chit business. He pleads ignorance regarding writing of endorsement on Ex.P.1 by his wife.

22. It is important to note that during the course of cross-examination of defendant he disputes his signatures

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appearing on the Ex.P.1 sale agreement which is contrary to the contention taken by the defendant in his written statement. Further, he admits about receipt of sum of Rs.3,00,000/- by way of cheque as mentioned in the Ex.P.1 sale agreement. These answers elicited from the mouth of defendant is sufficient to hold that the defendant has executed sale agreement in favour of plaintiff agreeing to sell the suit schedule property by receiving sum of Rs.25,00,000/- towards advance sale consideration. The contention taken up by the defendant regarding creation of Ex.P.1 sale agreement on the basis of signatures which were taken on blank stamp paper is not proved before this Court in accordance with law. It is important to note that, the defendant has not issued reply to the legal notice issued by the plaintiff disputing the transaction one stated by the plaintiff. This aspect also probablize the version of plaintiff with regard to sale transaction. Accordingly, Issue No.1 answered in the affirmative and Issue No.3 answered in the negative.

23. ISSUE No.2 : It is the definite case of plaintiff that she was always ready and willing to perform her part of the contract, and the defendant has failed to perform his part of contract in spite of her repeated requests and demands. The plaintiff in

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order to prove her readiness has produced copy of the legal notice dated 29.8.2012 before this Court as per Ex.P.5 – wherein, it is disclosed that on 29.8.2012, the Counsel for the plaintiff had issued legal notice to the defendant and the same was served upon the defendant – which is evident from a perusal of the contents of Ex.P.6 postal acknowledgment. Apart from that, the service of notice is also unequivocally admitted by the defendant during the course of his cross-examination. It is not the case of the defendant that the plaintiff has no source of income to pay the remaining balance sale consideration. On the background of the service of legal notice on the defendant issued by the plaintiff expressing her willingness to complete the sale transaction and also on the basis of admission on the part of the defendant, I have no hurdles to hold that the plaintiff is always ready and willing to perform her part of contract. Accordingly, Issue No.2 is answered in the affirmative.

24. ISSUE NOs.4 AND 5 : The plaintiff, with oral as well as documentary evidence, sufficiently proved before this Court that the defendant has agreed to sell the suit schedule property for total sale consideration of Rs.65,00,000/- by receiving advance sale consideration of Rs.25,00,000/-.

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Under such circumstances, the plaintiff is certainly entitled for the relief claimed in the suit. Since this Court is granting the relief of specific performance of contract infavor of the plaintiff, the alternative prayer for refund of advance sale consideration does not survive for consideration. Accordingly, Issue No.4 is answered in the partly affirmative and Issue No.5 is answered in the affirmative.

25. ISSUE No.6 : For my reasons and discussion on the above Issues, I proceed to pass the following –

ORDER

Suit of the plaintiff for specific performance of agreement of sale dated 10.1.2012 in respect of the suit schedule property, is hereby decreed with cost.

The defendant is hereby directed to execute registered sale deed in respect of the suit schedule property in favour of the plaintiff within three months from the date of this order – failing which, the plaintiff is at liberty to get the sale deed registered in accordance with law through the process of this Court.

The plaintiffs shall deposit the balance sale consideration of Rs.40,00,000/- in the Court within one month from the date of this order.

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Draw decree accordingly.

(Dictated to Stenographer Grade-I, transcribed by him, revised by me and after corrections, pronounced in open Court on this the 2nd day of March, 2024.)

An&/- (PRAKASH V.)
Holding Concurrent Charge of the
XXXI Additional City Civil and
Sessions Judge (CCH-14), Bengaluru.

ANNEXURE

1. WITNESSES EXAMINED FOR THE PLAINTIFF:

Examined on:

P.W.1	: Hemavathi	30.03.2016
P.W.2	: H. Dodda Lakkappa.	02.06.2017
P.W.3	: D. Doraiswamy	29.07.2017

2. DOCUMENTS MARKED ON BEHALF OF PLAINTIFF:

Ex.P.1 : Sale agreement dated 10.7.2012;
Exs.P.1(a) : Signatures of P.W.2 on Ex.P.1;
and P.1(b)
Exs.P.1(c) : Signatures of P.W.3 on Ex.P.1;
and P.1(d)
Ex.P.1(e) : Signature of the defendant.
Ex.P.2 : Khatha certificate.
Ex.P.3 : Khatha extract.
Ex.P.4 : Tax paid receipt.
Ex.P.5 : Office copy of legal notice dated 29.8.2012.
Ex.P.6 : Postal acknowledgment.

3. WITNESS EXAMINED FOR THE DEFENDANT:

D.W.1	: D. Vijay	15.02.2022
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4. DOCUMENT MARKED ON BEHALF OF DEFENDANT:

- Ex.D.1 : Original notice under Section 147 issued by the BBMP.
- Ex.D.2 : Unregistered Lease Agreement dated 21.8.2012 for period of two years.
- Ex.D.3 : Copy of the order passed in RFA No.324/2016.
- Exs.D.4 and D.5 : Copy of the encumbrance certificates.
- Ex.D.6 : Certified copy of deposition in O.S. No.2535/2017.
- Ex.D.7 : Certified copy of the order sheer in C.Mis, No.4603/2018.
- Ex.D.8 : Certified copy of the order sheet in Ex. No.25388/2012.
- Ex.D.9 : Original Pass Book of Indian Overseas Bank.
- Ex.D.10 : Certificate under Section 65(b) of the Indian Evidence Act.
- Ex.D.11 : Certified copy of agreement of sale dated 27.03.2013.
- Ex.D.12 : Certified copy of sale deed dated: 11.01.20217.
- Ex.D.13 : Certified copy of sale deed dated 11.01.2017.

(PRAKASH V.)

Holding Concurrent Charge of the
XXXI Additional City Civil and
Sessions Judge (CCH-14), Bengaluru.

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